

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

Michael Elias, Kelly Wemer, James Gallina, Julie Gallina, Tesha Hall, Brian Lawson, and Montgomery Headley, <i>on behalf of themselves</i> <i>and all others similarly situated,</i>	:	
	:	JURY DEMAND
Plaintiffs,	:	
vs.	:	Civil Case No.: 3:23-cv-00348
	:	
Nissan North America, Inc.,	:	Hon. Eli J. Richardson
	:	
Defendant.	:	

FIRST AMENDED CLASS ACTION COMPLAINT

For this First Amended Class Action Complaint, Plaintiffs Michael Elias, Kelly Wemer, James Gallina, Julie Gallina, Tesha Hall, Brian Lawson and Montgomery Headley, by undersigned counsel, state as follows:

INTRODUCTION

1. Plaintiffs bring this lawsuit on behalf of themselves and a proposed class of past and present owners and lessees of defective 2022-2023 Nissan Rogue vehicles (collectively the “Class Vehicles”) designed, manufactured, marketed, distributed, sold, warranted, and serviced by Defendant Nissan North America, Inc. (“Defendant” or “Nissan”).

2. Beginning in 2022, if not earlier, Nissan knew that due to the way the Class Vehicles’ engine components are manufactured and/or made the Class Vehicles contain one or more defective components within its engine’s Positive Crankcase Ventilation (“PCV”) system that allows fuel to seep through porous rubber components resulting in strong gas fumes emanating from the engine compartment area into the vehicles’ interior (hereinafter, “Gas Fumes Defect”).

3. The common engine defect and the resulting strong fuel odor throughout the interior of the vehicle makes Class Vehicle owners physically ill and is a fire safety hazard.

See, e.g.:

- NHTSA Complaint No. 11496829, December 9, 2022 (2022 Nissan Rogue): “My car smells gasoline inside and outside. I brought the car to the service dealer but the service manager said that they cannot figure out where gas odor coming from. I am using my car in bringing my 2 kids to school and going to work. **My kids are getting sick** and I am afraid my car will cause fire.”
- NHTSA Complaint No. 11502157, January 17, 2023 (2022 Nissan Rogue): “After 9 months of owning this car. When I drive for 20 or so miles and turn the vehicle off for a short period then restart I smell **gas and fumes make me sick and my eyes water at times**. The dealer found nothing wrong. Nissan corporate got involved after I emailed them. Their engineering tech confirmed it was happening.”
- NHTSA Complaint No. 11504489, January 30, 2023 (2022 Nissan Rogue): “Gas fumes from engine compartment – after the car has been driven 20-30 mins enough to heat up the engine and then parked (turned off) for 10-15 minutes a strong smell of gasoline is detected, you can smell it either by sniffing in the front grill or if you start it and use the outdoor air circulation in the cabin it will come through the vents. There are enough fumes to fill a 1 car garage in 30 mins with a thick odor of gasoline. **The fumes are nauseating and cause headaches**. My salesman at Hawk Nissan suggested changing gas to a top tier brand so I starting using Mobile but no help with the fume issue. After speaking with a service manager at Woodfield Nissan, he said that he’s had a few cars come in recently with the same problem. Nothing is showing up mechanically so they chalked it up to a “break-in period” and/or possibly a coating used in manufacturing. Brought it back to Woodfield Nissan a couple weeks later stating the oil dipstick has a strong smell of gasoline same smell I get in the cabin and around the car. He found nothing unusual with the oil smell. I took it into Hawk Nissan Oct 2022 with 800 miles now with 2943 miles still having the issue. Not sure if this is affecting my MPG but I'm only getting 18-20 MPG mix of city & highway driving. Recently I'm seeing a lot of the same complaints with the 2023 models.”
- NHTSA Complaint No. 11505449, February 3, 2023 (2023 Nissan Rogue): “Vehicle smells of strong gas smell in the cab and around the vehicle. **Smell is so strong it makes you feel light headed and gives you a headache. This is a huge health concern for me and my family**. When parking in the garage it smells so strong that you have to then park it outside so you do not have a fire hazard in the garage. Took it to the dealership to have diagnosed and was told that Nissan is aware of the issue and it is under engineering review but there is nothing they can do at this time. I then reached out to Nissan consumer affairs and they denied a buy back and told me that it is under engineering review but they do not have a fix for

it. If they do not have a fix they should buy it back. This is a huge safety and health concern for me and my family.”

- NHTSA Complaint No. 11505610, February 4, 2023 (2022 Nissan Rogue): “We bought our 2022 Rogue in September 2022, it now has around 5300 miles on it. In December, we noticed that every time we drive it, the inside of the car fills with gas fumes. **The fumes are so strong that it gives us extreme headaches, dizziness and nausea.** When we park the Rogue in our garage, it creates a strong gas smell. We are concerned that it could explode or cause a fire. The vehicle was taken to Ron Sayer Nissan in Idaho Falls, Idaho on February 4, 2023 for diagnosis. The service manager, [XXX], informed us after examining the vehicle that he did not know what is causing the strong gasoline odor. The dealership did nothing to repair the vehicle and the problem continues.”
- NHTSA Complaint No. 11508056, February 19, 2023 (2023 Nissan Rogue): “The cabin of the vehicle fills with a gasoline odor when driven. When I park the vehicle in the garage (with engine OFF), the garage fills with a gasoline odor. **I have experienced nausea and headaches with the smell. My oldest child has complained about the smell and making his head hurt.** It is very concerning that my ATTACHED garage fills with gasoline odor and could continue into my residence. I am now forced to park my vehicle outside and can not have my two children in the vehicle. I took the vehicle back to the dealership and they initially claimed it was an O Ring around the gasoline tank. They replaced it and the issue still continued. They then advised that Nissan is aware of this issue but does not have a fix at this time. There are cases around the country with this issue. I am now using a loaner vehicle from the dealership until Nissan finds a fix. There is approximately 5,300 miles on the vehicle. There are no warning messages on the dash. This problem started at the beginning of January.”
- NHTSA Complaint No. 11513772, March 25, 2023 (2023 Nissan Rogue): “When parked and off, or sitting in idle a major smell of gasoline is spewing out of the hvac system in the car. **It makes me nauseous and major headaches.** This can’t be safe to drive. This has always been an issue. I’ve only owned the vehicle since December.”
- NHTSA Complaint No. 11513040, March 21, 2023 (2022 Nissan Rogue): “Vehicle smells of strong gas smell in the cab and around the vehicle. Smell is so strong it makes you feel light headed and gives you a headache. This is a huge health concern for me. **When parking in the garage it smells so strong that you have to then park it outside for a couple hours after driving so you do not have a fire hazard in the garage.** Took it to the dealership to have diagnosed and was told that they can't find a problem however now I'm see reports that Nissan is aware of the issue and it is under engineering review but there is nothing they can do at this time. I then reached out to Nissan consumer affairs which was absolutely no help at all. This is a huge safety and health concern for me.”

- NHTSA Complaint No. 11517729, April 18, 2023 (2023 Nissan Rogue): “I purchased my 2023 Nissan Rogue SV in Oct of 2022. After a few weeks of parking in the garage I noticed the smell of raw gas in my garage. At about 1000 miles I noticed the smell of raw gas while driving slowly through the neighborhood and while stopped at stop signs and traffic lights. I brought the car back to the Nissan dealership where I purchased it from and explained I was smelling raw gas. The dealership told me there was a break in period and after about 5000 miles I should notice improved gas mileage and the quote "weird" smells should go away. I now have 7,200 miles on the car and **the raw gas smell is far worse to the point of causing me headaches and nausea. I cannot park in the garage anymore because it makes even my house smell of gas. I now fear of explosion from gas fumes.** I would trade the vehicle for something safer but at this time can not afford to do so.”
- NHTSA Complaint No. 11518063, April 20, 2023 (2022 Nissan Rogue): “The contact owns a 2022 Nissan Rogue. The contact stated that a few months after she purchased the vehicle, she noticed an abnormally strong gasoline odor inside and outside the vehicle. No warning lights were illuminated. The vehicle was taken to the dealer where the vehicle was inspected, but no failure was found. The contact stated that the odor became extremely strong. The vehicle was taken to another dealer where the contact was informed that the manufacture was aware of the issue; however, there was no remedy, and that the cause of the odor was due to the winter gasoline blend. **The contact stated that she was concerned that the fuel odor might cause a fire.** The vehicle was not repaired. The manufacturer was notified of the failure and the contact was provided a case number and advised to call the NHTSA Hotline. The failure mileage was approximately 7,000.”

4. Additionally, Nissan has failed to adequately repair the defect under Nissan’s warranty. When Class Vehicle owners, including Plaintiffs, complain about the defect to Nissan dealerships, and seek repairs under Nissan’s warranty, they are consistently told Nissan has no repair for this defect, thus forcing drivers to continue to experience the noxious odors when driving their brand new, unrepaired Class Vehicles. *See, e.g.:*

- NHTSA Complaint No. 11498633, December 23, 2022 (2023 Nissan Rogue): “When driving vehicle cabin will fill with a fuel odor which can make you nauseous. In order to prevent the vents need to be on recirculate which in turn fog up all the windows in the winter time. Also when vehicle is parked in garage it fills the garage with an extremely strong fuel odor. Has been to the dealer 3 times, 2 times they couldn’t reproduce and the 3rd time they can’t find the problem. **Nissan is aware and has it under ‘engineering review’ with multiple claims from other owners.**”

- NHTSA Complaint No. 11499442, December 29, 2022 (2022 Nissan Rogue): “For several weeks I have noticed strong smell of gasoline when my car is parked in my garage. Today, I called my Nissan dealer because I am very concerned. **The service advisor informed me that they have received many similar complaints and Nissan is supposedly trying to identify and remedy the problem.** He said my car is safe, but I am terribly concerned.”
- NHTSA Complaint No. 11503128, January 23, 2023 (2023 Nissan Rogue): “Fuel smell from engine compartment that enters cabin if heat turned on. Took to dealer, nothing showed up on computer. Unable to see leak, or evidence of fuel leak. Started about 2 months ago. **Was reported to Nissan who states that it’s under engineering review.** Fuel smell lingers for a couple hrs after parked in garage. Concern for health exposure to fumes and potential engine fire hazard. No check engine warning lamps.”
- NHTSA Complaint No. 11503767, January 26, 2023 (2023 Nissan Rogue): “After about the 3k miles mark, I started noticing a raw gas smell on the interior of the cabin when driving the vehicle. I also notice this gas smell when my vehicle is parked in my garage, with the engine off. I brought it to my local Nissan dealer, and they confirmed that it is a known issue 3 other 2023 Rogue customers have reported to this dealership. They did a visual inspection for leaks, and ran a computer diagnostic but nothing was found. **At this point they informed me that corporate Nissan is aware of the issue and until they find the root cause of the problem, and issue a recall there is nothing my dealer can do.**”

5. Had Plaintiffs, and the Class Members known about the Gas Fumes Defect, they would not have purchased the Class Vehicles, or would have paid substantially less for them.

6. As a result of their reliance on Defendant’s omissions, owners, and/or lessees of the Class Vehicles have suffered ascertainable loss of money, property, and/or loss in value of their Class Vehicles.

7. Nissan’s conduct constitutes fraudulent concealment and unjust enrichment and is a breach of express and implied warranties, the Michigan Consumer Protection Act, Mich. Comp. Laws Ann. § Ch. 445, *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, Iowa Private Right of Action for Consumer

Frauds Act, Iowa Code § 714H.1, *et seq.*, N.Y. Gen. Bus. Law § 349, Minnesota Consumer Fraud Act, Minn. Stat. Ann. § 325F.68, *et seq.*, and the Magnuson-Moss Warranty Act.

8. Nissan has and will continue to benefit from its unlawful conduct – by selling more vehicles, at a higher price, and avoiding warranty obligations – while consumers are harmed at the point of sale as their vehicles continue to suffer from the unremedied Gas Fumes Defect.

9. To remedy Nissan’s unlawful conduct, Plaintiffs, on behalf of the proposed class members, seek damages, and restitution from Nissan, as well as notification to class members about the defect.

PARTIES

10. Plaintiff Michael Elias (“Plaintiff Elias” or “Mr. Elias”) is an adult individual residing in Clinton Township, Michigan.

11. Plaintiff Kelly Wemer (“Plaintiff Wemer” or “Ms. Wemer”) is an adult individual residing in Farmer City, Illinois.

12. Plaintiff James Gallina (“Mr. Gallina”) and Plaintiff Julie Gallina (“Mrs. Gallina,” and together with Mr. Gallina, the “Gallinas”) are each an adult individual residing in Round Lake Beach, Illinois.

13. Plaintiff Tesha Hall (“Plaintiff Hall” or “Ms. Hall”) is an adult individual residing in Davenport, Iowa.

14. Plaintiff Brian Lawson (“Plaintiff Lawson” or “Mr. Lawson”) is an adult individual residing in Bradford, Pennsylvania.

15. Plaintiff Montgomery Headley (“Plaintiff Headley” or “Mr. Headley”) is an adult individual residing in Sauk Rapids, Minnesota.

16. Defendant Nissan North America, Inc. (“Nissan”) is a Delaware corporation with a principal place of business in Franklin, Tennessee.

17. At all times herein mentioned, Nissan designed, engineered, developed, manufactured, fabricated, assembled, equipped, tested or failed to test, inspected or failed to inspect, repaired, retrofitted or failed to retrofit, failed to recall, labeled, advertised, promoted, marketed, supplied, distributed, wholesaled, and/or sold the Class Vehicles, including the vehicles operated by Plaintiffs. Nissan also reviews, and analyzes warranty data submitted by Nissan’s dealerships, and authorized technicians in order to identify defect trends in vehicles. Upon information and belief, Nissan dictates that when a repair is made under warranty (or warranty coverage is requested), service centers must provide Defendant with detailed documentation of the problem, and the fix that describes the complaint, cause, and correction, and also save the broken part in the event Defendant decide to audit the dealership. Nissan uses this information to determine whether particular repairs are covered by an applicable Nissan warranty, or are indicative of a pervasive defect.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) of the Class Action Fairness Act of 2005 because: (i) there are 100 or more class members; (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs; and (iii) there is minimal diversity because Plaintiffs and Class Members, and Defendant are citizens of different states.

19. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs present a claim under the federal Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* As to the state law claims, this Court has supplemental

jurisdiction pursuant to 28 U.S.C. §1367.

20. Personal jurisdiction, and venue are proper in this District as Defendant is headquartered in this District.

FACTUAL ALLEGATIONS APPLICABLE TO INDIVIDUAL PLAINTIFFS

I. Michael Elias

21. On December 3, 2022, Mr. Elias purchased a new 2023 Nissan Rogue, Vehicle Identification Number 5N1BT3BB0PC736117 (hereafter the “Elias Vehicle”) from Jeffrey Automotive Group, Inc., in Roseville, Michigan (hereinafter, “JAG”), an authorized Nissan dealership.

22. Passenger safety and reliability were important factors to Mr. Elias’ decision to purchase the vehicle. Prior to purchasing the 2023 Nissan Rogue, Mr. Elias researched the vehicle by looking at the vehicle’s specifications and features listed on Nissan’s website and in Nissan’s online brochure, and on the 2023 Nissan Rogue side window sticker. Based on Nissan’s representations, Mr. Elias was led to believe that the 2023 Nissan Rogue was, among other things, a safe, reliable, and high-quality vehicle.

23. Further, prior to the purchase, JAG assured Mr. Elias that the Elias Vehicle was accompanied by Nissan North America, Inc.’s written New Vehicle Limited Warranty, which includes basic coverage for 36 months or 36,000 miles, whichever comes first, and a Powertrain Warranty covering, amongst other things, certain engine defects for 60 months or 60,000 miles, whichever comes first. JAG also assured Mr. Elias that the Elias Vehicle was free from defects of workmanship, and that the car was safe and reliable. JAG had an opportunity to disclose the existence of the Gas Fumes Defect during these pre-sale interactions but failed to do so.

24. Despite Mr. Elias' research prior to purchasing the vehicle, neither Nissan nor the selling dealership ever disclosed at the time of purchase that the 2023 Nissan Rogue contained the Gas Fumes Defect. Indeed, Nissan concealed this information from consumers, and Mr. Elias was not aware of, and did not have any reason to anticipate, that his vehicle was afflicted by the Gas Fumes Defect when he purchased the vehicle.

25. Nissan's omissions were material to Mr. Elias. If Nissan had adequately disclosed these facts before Mr. Elias purchased the vehicle, he would have learned of the concealed information and would not have bought the vehicle or would have paid less for it had he known the vehicle suffered from the Gas Fumes Defect.

26. Shortly after Mr. Elias purchased his vehicle, he observed that after he drove the car and then parked, it emitted an intense smell of gasoline in the interior of the vehicle. The gasoline odor is more intense shortly after Mr. Elias parked the vehicle in his garage after having driven it. The intensity of the gasoline smell made it impossible to stay in the garage at a risk of becoming physically ill from the fumes.

27. On January 30, 2023, having driven the vehicle less than 2,000 miles, Mr. Elias brought his vehicle to JAG, complaining about the Elias Vehicle's noxious gasoline odors. In response, JAG inspected the vehicle and confirmed that gas fumes smell was a known issue. However, the dealer advised Mr. Elias that there were no repairs available.

28. On March 3, 2023, Mr. Elias, through his counsel, sent a letter to Nissan advising it that the Elias Vehicle suffered from the Gas Fumes Defect and had not been repaired under Nissan's warranties.

29. On or about May 1, 2023, Mr. Elias returned his vehicle to JAG and complained about the Elias Vehicle's noxious gasoline odors. In response, JAG inspected the

vehicle and attempted a repair by replacing a PCV hose. However, the vehicle continued to emit noxious fuel odors following this repair attempt.

30. On or about June 13, 2023, Mr. Elias returned his vehicle to JAG again and complained about the Elias Vehicle's noxious gasoline odors. In response, JAG inspected the vehicle and attempted a repair by replacing yet again the PCV hose.

31. At all times, Mr. Elias has driven his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

II. Kelly Wemer

32. On December 16, 2022, Ms. Wemer purchased a new 2023 Nissan Rogue, Vehicle Identification Number 5N1BT3CB5PC753476 (hereafter the "Wemer Vehicle") from RPG Imports, LLC d/b/a O'Brien Nissan of Bloomington, in Bloomington, Illinois (hereinafter, "O'Brien Nissan"), an authorized Nissan dealership.

33. Passenger safety and reliability were important factors to Ms. Wemer's decision to purchase the vehicle.

34. Further, prior to the purchase, O'Brien Nissan assured Ms. Wemer that the Wemer Vehicle was accompanied by Nissan North America, Inc.'s written New Vehicle Limited Warranty, which includes basic coverage for 36 months or 36,000 miles, whichever comes first, and a Powertrain Warranty covering, amongst other things, certain engine defects for 60 months or 60,000 miles, whichever comes first. O'Brien Nissan also assured Ms. Wemer that the Wemer Vehicle was free from defects of workmanship, and that the car was safe and reliable. O'Brien Nissan had an opportunity to disclose the existence of the Gas Fumes Defect during these pre-sale interactions but failed to do so.

35. Neither Nissan nor the selling dealership ever disclosed at the time of purchase

that the 2023 Nissan Rogue contained the Gas Fumes Defect. Indeed, Nissan concealed this information from consumers, and Ms. Wemer was not aware of, and did not have any reason to anticipate, that her vehicle was afflicted by the Gas Fumes Defect when she purchased the vehicle.

36. Nissan's omissions were material to Ms. Wemer. If Nissan had adequately disclosed these facts before Ms. Wemer purchased the vehicle, she would have learned of the concealed information and would not have bought the vehicle or would have paid less for it had she known the vehicle suffered from the Gas Fumes Defect.

37. A little over a month after Ms. Wemer purchased her vehicle, she observed that when driving the car gasoline fumes would enter the interior of the vehicle. Progressively, the intensity of the fumes grew and saturated the vehicle interior and the clothing inside the vehicle with gasoline odor. The gasoline odor is even more intense shortly after Ms. Wemer parked the vehicle.

38. Ms. Wemer then called O'Brien Nissan and complained about the gasoline odor in her car, and made an appointment to bring the Wemer Vehicle to O'Brien Nissan for service and repair.

39. At the end of February 2023, Ms. Wemer brought her vehicle to O'Brien Nissan, complaining about the Wemer Vehicle's noxious fuel odors. In response, O'Brien Nissan inspected the vehicle and confirmed that gas fumes smell was a known issue but that Nissan had no fix.

40. On March 2, 2023, Ms. Wemer, through her counsel, sent a letter to Nissan advising it that the Wemer Vehicle suffered from the Gas Fumes Defect and had not been repaired under Nissan's warranties.

41. On March 30, 2023, Ms. Wemer called O'Brien Nissan again to schedule an appointment for the dealer to repair the noxious gasoline odors still emanating from the Wemer Vehicle. O'Brien Nissan refused to schedule a warranty repair appointment and claimed that there were no repair available.

42. At all times, Ms. Wemer has driven her vehicle in a foreseeable manner and in the manner in which it was intended to be used.

III. James Gallina and Julie Gallina

43. On November 26, 2022, Gallinas purchased a new 2023 Nissan Rogue, Vehicle Identification Number JN8BT3BB1PW184747 (hereafter the "Gallinas Vehicle") from Woodfield Nissan in Hoffman Estates, Illinois (hereinafter, "Woodfield Nissan"), an authorized Nissan dealership.

44. Passenger safety and reliability were important factors to the Gallinas' decision to purchase the vehicle. Prior to purchasing the 2023 Nissan Rogue, the Gallinas researched the vehicle by looking at the vehicle's specifications and features listed on Nissan's website. Based on Nissan's representations, the Gallinas were led to believe that the 2023 Nissan Rogue was, among other things, a safe, reliable, and high-quality vehicle.

45. Further, prior to the purchase, Woodfield Nissan assured the Gallinas that the Gallinas Vehicle was accompanied by Nissan North America, Inc.'s written New Vehicle Limited Warranty, which includes basic coverage for 36 months or 36,000 miles, whichever comes first, and a Powertrain Warranty covering, amongst other things, certain engine defects for 60 months or 60,000 miles, whichever comes first. Woodfield Nissan also assured the Gallinas that the Gallinas Vehicle was free from defects of workmanship, and that the car was safe and reliable. Woodfield Nissan had an opportunity to disclose the existence of the Gas

Fumes Defect during these pre-sale interactions but failed to do so.

46. Despite the Gallinas' research prior to purchasing the vehicle, neither Nissan nor the selling dealership ever disclosed at the time of purchase that the 2023 Nissan Rogue contained the Gas Fumes Defect. Indeed, Nissan concealed this information from consumers, and the Gallinas were not aware of, and did not have any reason to anticipate, that their vehicle was afflicted by the Gas Fumes Defect when they purchased the vehicle.

47. Nissan's omissions were material to the Gallinas. If Nissan had adequately disclosed these facts before the Gallinas purchased the vehicle, they would have learned of the concealed information and would not have bought the vehicle or would have paid less for it had they known the vehicle suffered from the Gas Fumes Defect.

48. A little over a month after the Gallinas purchased their vehicle, they observed that when driving the car gasoline fumes would enter the interior of the vehicle. Progressively, the intensity of the fumes grew and saturated the vehicle interior with gasoline odor. The gasoline odor is even more intense shortly after the Gallinas park the vehicle the garage, filling the entire garage with gas fumes heavy enough to induce headache.

49. On January 10, 2023, the Gallinas brought their vehicle to Woodfield Nissan, complaining about the Gallinas Vehicle's noxious odors. In response, Woodfield Nissan inspected the vehicle, confirmed the vehicle smelled of gas, and stated that gas fumes smell was a known issue but that Nissan had no fix.

50. During that visit to Woodfield Nissan, the Gallinas expressed concern whether gas fumes posed a fire risk and what were the effects of such intense gas fumes on their health, and asked Woodfield Nissan whether the car was safe to drive. In response, Woodfield Nissan told the Gallinas they should pick up their car and await on a fix from

Nissan.

51. Subsequently, the Gallinas called Nissan Consumer Affairs and complained about the Gas Fumes Defect that dealer would not fix. Nissan Consumer Affairs opened case number 48047271, confirmed that Nissan is aware of the Gas Fumes Defect and that Nissan is performing a review.

52. By a letter dated February 7, 2023, the Gallinas followed up directly to Nissan and to Woodfield Nissan that their vehicle continues to suffer from the Gas Fumes Defect, that their vehicle continues to smell of gas, that their garage continues to smell of gas, and requested a repair.

53. On February 22, 2023, the Gallinas, through their counsel, sent a letter to Nissan advising it that the Gallinas Vehicle suffered from the Gas Fumes Defect and had not been repaired under Nissan's warranties.

54. On March 2, 2023, the Gallinas returned their vehicle to Woodfield Nissan and complained of strong gas odor still emanating from the Gallinas Vehicle. Woodfield Nissan attempted a repair by installing a test PCV Valve / Ventilation Hose provided by Nissan. Woodfield Nissan asked the Gallinas to drive the vehicle and see whether test part resolves the Gas Fumes Defect.

55. The test part has not fixed the Gas Fumes Defect and on April 13, 2023, the Gallinas returned the car to Woodfield Nissan complaining of gas fumes. In response, Woodfield Nissan installed a new style PCV Valve / Ventilation Hose supplied by Nissan to test on the Gallinas Vehicle.

56. At all times, the Gallinas have driven their vehicle in a foreseeable manner and in the manner in which it was intended to be used.

IV. Tesha Hall

57. On February 11, 2023, Ms. Hall purchased a new 2023 Nissan Rogue, Vehicle Identification Number JN8BT3BBXPW463355 (hereafter the “Hall Vehicle”) from Kunes of Davenport, Inc. d/b/a Kunes Nissan in Davenport, Iowa (hereinafter, “Kunes Nissan”), an authorized Nissan dealership.

58. Passenger safety and reliability were important factors to Ms. Hall’s decision to purchase the vehicle.

59. Further, prior to the purchase, Kunes Nissan assured Ms. Hall that the Hall Vehicle was accompanied by Nissan North America, Inc.’s written New Vehicle Limited Warranty, which includes basic coverage for 36 months or 36,000 miles, whichever comes first, and a Powertrain Warranty covering, amongst other things, certain engine defects for 60 months or 60,000 miles, whichever comes first. Kunes Nissan assured Ms. Hall that the Hall Vehicle was free from defects of workmanship, and that the car was safe and reliable. Kunes Nissan had an opportunity to disclose the existence of the Gas Fumes Defect during these pre-sale interactions but failed to do so.

60. Neither Nissan nor the selling dealership ever disclosed at the time of purchase that the 2023 Nissan Rogue contained the Gas Fumes Defect. Indeed, Nissan concealed this information from consumers, and Ms. Hall was not aware of, and did not have any reason to anticipate, that her vehicle was afflicted by the Gas Fumes Defect when she purchased the vehicle.

61. Nissan’s omissions were material to Ms. Hall. If Nissan had adequately disclosed these facts before Ms. Hall purchased the vehicle, she would have learned of the concealed information and would not have bought the vehicle or would have paid less for it

had she known the vehicle suffered from the Gas Fumes Defect.

62. Within weeks after Ms. Hall purchased her vehicle, she observed that when driving the car gasoline fumes would enter the interior of the vehicle. Progressively, the intensity of the fumes grew and saturated the vehicle interior with gasoline odor. The gasoline odor was even more intense once Ms. Hall parked her vehicle in the garage of her home, filling the entire garage and the ground floor of her house with gas fumes.

63. On March 3, 2023, Ms. Hall brought her vehicle to Courtesy Moline, Nissan's authorized dealership in Moline, Illinois (hereinafter "Courtesy Moline"), and complained about the Hall Vehicle's noxious fuel odors. In response, Courtesy Moline inspected the vehicle and confirmed that gas fumes smell was a known issue but that Nissan had no fix. In addition, Courtesy Moline gave Ms. Hall a pamphlet dated January of 2023 confirming that Nissan was aware of the Gas Fumes defect but had no fix.

64. In addition, Ms. Hall complained to Nissan directly that her vehicle suffered from the Gas Fumes Defect and that her car was in need of repair.

65. On May 11, 2023, Ms. Hall, through her counsel, sent a letter to Nissan advising it that the Hall Vehicle suffered from the Gas Fumes Defect and had not been repaired under Nissan's warranties.

66. At all times, Ms. Hall has driven her vehicle in a foreseeable manner and in the manner in which it was intended to be used.

V. Brian Lawson

67. On October 22, 2022, Mr. Lawson purchased a new 2023 Nissan Rogue, Vehicle Identification Number 5N1BT3AB4PC686095 (hereafter the "Lawson Vehicle") from Shults Nissan Subaru in Jamestown, New York (hereinafter, "Shults Nissan"), an

authorized Nissan dealership.

68. Passenger safety and reliability were important factors to Mr. Lawson's decision to purchase the vehicle. Prior to purchasing the 2023 Nissan Rogue, Mr. Lawson researched the vehicle by looking at the vehicle's specifications and features listed on Nissan's website and in the 2023 Nissan Rogue side window sticker. Based on Nissan's representations, Mr. Lawson was led to believe that the 2023 Nissan Rogue was, among other things, a safe, reliable, and high-quality vehicle.

69. Further, prior to the purchase, Shults Nissan assured Mr. Lawson that the Lawson Vehicle was accompanied by Nissan North America, Inc.'s written New Vehicle Limited Warranty, which includes basic coverage for 36 months or 36,000 miles, whichever comes first, and a Powertrain Warranty covering, amongst other things, certain engine defects for 60 months or 60,000 miles, whichever comes first. Shults Nissan also assured Mr. Lawson that the Lawson Vehicle was free from defects of workmanship, and that the car was safe and reliable. Shults Nissan had an opportunity to disclose the existence of the Gas Fumes Defect during these pre-sale interactions but failed to do so.

70. Despite Mr. Lawson's research prior to purchasing the vehicle, neither Nissan nor the selling dealership ever disclosed at the time of purchase that the 2023 Nissan Rogue contained the Gas Fumes Defect. Indeed, Nissan concealed this information from consumers, and Mr. Lawson was not aware of, and did not have any reason to anticipate, that his vehicle was afflicted by the Gas Fumes Defect when he purchased the vehicle.

71. Nissan's omissions were material to Mr. Lawson. If Nissan had adequately disclosed these facts before Mr. Lawson purchased the vehicle, he would have learned of the concealed information and would not have bought the vehicle or would have paid less for it

had he known the vehicle suffered from the Gas Fumes Defect.

72. Within the first few weeks after Mr. Lawson purchased his vehicle, he observed that after he drove the car and then parked, it emitted an intense smell of gasoline in the interior of the vehicle. The gasoline odor was more intense shortly after Mr. Lawson parked the vehicle in his garage after having driven it. The intensity of the gasoline smell made it impossible to stay in the garage at a risk of becoming physically ill from the fumes.

73. On April 13, 2023, Mr. Lawson brought his vehicle to Shults Nissan, complaining about the Lawson Vehicle's noxious gasoline odors. In response, Shults Nissan inspected the vehicle and confirmed that gas fumes smell was a known issue. However, the dealer advised Mr. Lawson that there were no repairs available.

74. On April 29, 2023, Mr. Lawson brought his vehicle to Shults Nissan again and complained about the Lawson Vehicle's noxious gasoline odors. In response, Shults Nissan inspected the vehicle, confirmed again that gas fumes smell was a known issue, but that Nissan had no fix for this issue.

75. On July 6, 2023, Mr. Lawson, through his counsel, sent a letter to Nissan advising it that the Lawson Vehicle suffered from the Gas Fumes Defect and had not been repaired under Nissan's warranties.

76. At all times, Mr. Lawson has driven his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

VI. Montgomery Headley

77. On July 2, 2022, Mr. Headley purchased a new 2022 Nissan Rogue, Vehicle Identification Number 5N1BT3CB4NC704735 (hereafter the "Headley Vehicle") from Walser Nissan Coon Rapids in Coon Rapids, Minnesota (hereinafter, "Walser Nissan"), an

authorized Nissan dealership.

78. Passenger safety and reliability were important factors to Mr. Headley's decision to purchase the vehicle. Prior to purchasing the 2022 Nissan Rogue, Mr. Headley researched the vehicle by looking at the vehicle's specifications and features listed in the Nissan's printed brochure, on the Nissan's website, and on the 2022 Nissan Rogue side window sticker. Based on Nissan's representations, Mr. Headley was led to believe that the 2022 Nissan Rogue was, among other things, a safe, reliable, and high-quality vehicle.

79. Further, prior to the purchase, Walser Nissan assured Mr. Headley that the Headley Vehicle was accompanied by Nissan North America, Inc.'s written New Vehicle Limited Warranty, which includes basic coverage for 36 months or 36,000 miles, whichever comes first, and a Powertrain Warranty covering, amongst other things, certain engine defects for 60 months or 60,000 miles, whichever comes first. Walser Nissan also assured Mr. Headley that the Headley Vehicle was free from defects of workmanship, and that the car was safe and reliable. Walser Nissan had an opportunity to disclose the existence of the Gas Fumes Defect during these pre-sale interactions but failed to do so.

80. Despite Mr. Headley's research prior to purchasing the vehicle, neither Nissan nor the selling dealership ever disclosed at the time of purchase that the 2022 Nissan Rogue contained the Gas Fumes Defect. Indeed, Nissan concealed this information from consumers, and Mr. Headley was not aware of, and did not have any reason to anticipate, that his vehicle was afflicted by the Gas Fumes Defect when he purchased the vehicle.

81. Nissan's omissions were material to Mr. Headley. If Nissan had adequately disclosed these facts before Mr. Headley purchased the vehicle, he would have learned of the concealed information and would not have bought the vehicle or would have paid less for it

had he known the vehicle suffered from the Gas Fumes Defect.

82. Two months after Mr. Headley purchased his vehicle, he observed that after he drove the car and then parked it, the car emitted an intense smell of gasoline in the interior of the vehicle. Mr. Headley also smelled gasoline fumes inside the vehicle when idling while stopped. In addition, the gasoline odor was even more intense shortly after Mr. Headley parked the vehicle in his garage after having driven it, filling the whole garage with noxious fuel odor.

83. On Fall of 2022, Mr. Headley brought his vehicle to Walser Nissan, complaining about the Headley Vehicle's noxious gasoline odors. In response, Walser Nissan inspected the Headley Vehicle, advised Mr. Headley it found no fuel leak and returned the vehicle back to Mr. Hedley.

84. On February 7, 2023, Mr. Headley brought his vehicle to Miller Nissan in St. Cloud, Minnesota (hereafter the "Miller Nissan"), an authorized Nissan dealership, and again and complained about the Headley Vehicle's noxious gasoline odors. In response, Miller Nissan inspected the vehicle, confirmed that gas fumes smell was a known issue, but hat Nissan had no fix for this issue.

85. On June 8, 2023, Mr. Headley, through his counsel, sent a letter to Nissan advising it that the Headley Vehicle suffered from the Gas Fumes Defect and had not been repaired under Nissan's warranties.

86. At all times, Mr. Headley has driven his vehicle in a foreseeable manner and in the manner in which it was intended to be used.

FACTUAL ALLEGATIONS

The Gas Fumes Defect

87. Nissan began selling the Class Vehicles in or around October 2021, when Nissan introduced for the first time a 1.5-liter KR15DDT three-cylinder variable-compression turbocharged (VC-Turbo) engine.

88. “The VC-Turbo is the most advanced engine Nissan has ever produced in the U.S.,” according to Steve Marsh, Senior Vice President, Manufacturing and Supply Chain Management, Nissan North America.”¹

89. However, despite being the most advanced engine produced by Nissan in the United States, the internal combustion engines are defective and emit noxious gasoline odors that make driving the Class Vehicles unsafe, unpleasant and undesirable.

90. The Class Vehicles are unsafe because whenever fuel vapor is present in an enclosed space, such as Class Vehicles’ engine compartment or the garage where such vehicles are parked, such fuel vapor is highly combustible and one little spark is all that it takes to ignite such fuel vapors.

91. Beginning in 2022, if not before, Nissan knew that the Class Vehicles contain one or more design, and/or manufacturing defects within its PCV system that allows fuel to seep through porous rubber components resulting in strong gas fumes emanating from the engine compartment area that also permeates into the vehicles’ interior (the “Gas Fumes Defect”). Nonetheless, Nissan has been unable to adequately repair the defect to date.

92. As set forth above, Nissan authorized dealerships inspected Plaintiffs’ vehicles

¹ <https://usa.nissannews.com/en-US/releases/release-9eea16a47c78109cfe96b677a005fc7e-2022-rogue-to-feature-nissans-all-new-15-liter-vc-turbo-engine> (last visited March 29, 2023).

and acknowledged Nissan knows the Class Vehicles suffer from the Gas Fumes Defect but Nissan has no fix.

93. Other Class Vehicle owners have likewise complained that their vehicles continue to experience the Gas Fumes Defect and remain unrepaired despite bringing their vehicles to the Nissan dealers for warranty repairs. For instance, on December 20, 2022, one Class Vehicle owner inquired on a Nissan Rogue-enthusiast website whether other Class Vehicle owners experienced their cabins filling with gas fuel smell and added that when parking in his garage within ten minutes whole garage smelled like gas.² He added that he complained to a Nissan dealership repeatedly of smelling gas to which dealership responded it had numerous other Class Vehicle owners complaining of same defect and that Nissan was investigating but had no fix.³ In response, numerous other Class Vehicle owners posted experiencing the same gas fuel smell in their vehicles too, complaining of the defect to the Nissan dealerships and Nissan directly, but receiving no relief.⁴

94. Further, owners of the Class Vehicles consistently complain that Nissan dealers fail to perform any repairs on their vehicles and no repair attempt is even available regarding their vehicles. Neither Plaintiff Elias nor Wemer were provided with any repair attempts despite each complaining to a dealer and requesting a repair.

95. Nissan had and has a duty to fully disclose the true nature of the Gas Fumes Defect and the associated repair costs to Class Vehicle owners because, among other reasons, the Defect poses an unreasonable safety hazard; Nissan had and has exclusive knowledge or

² <https://www.nissanforums.com/threads/23-rogue-awd-sv-fuel-smell-in-cabin-and-garage-after-parked.279125/> (last visited April 11, 2023).

³ *Id.*

⁴ *Id.*; see also <https://www.nissanforums.com/threads/2023-rogue-gas-leak-gas-fumes-engineering-review-recall.279189/> (last visited April 11, 2023).

access to material facts about the Class Vehicles' engines that were and are not known to or reasonably discoverable by Plaintiffs and the other Class Members; and Nissan has failed to disclose the Gas Fumes Defect to its customers. Because the PCV system components within each Class Vehicle engine is defective, the Class Vehicles' the PCV system components should be repaired or replaced by Nissan free of charge regardless of whether the Gas Fumes Defect has manifested, or the facts and circumstances surrounding any failure.

Nissan's Knowledge of the Defect

96. Before Nissan sold Plaintiffs their Class Vehicles, Nissan was on notice that the Class Vehicles suffered from the Gas Fumes Defect, however Nissan failed to disclose the existence of the defect to Plaintiffs or any other Class Vehicle owner.

97. Nissan became aware of the Gas Fumes Defect through sources not available to Plaintiffs and Class Members, including, but not limited to, pre-production testing, pre-production design failure mode, and analysis data; production design failure mode, and analysis data; early consumer complaints made exclusively to Nissan's network of dealers, and directly to Nissan; aggregate warranty data compiled from Nissan's network of dealers; testing conducted by Nissan in response to consumer complaints; and repair order, and parts data received by Nissan from Nissan's network of dealers.

98. On information and belief, during the pre-release process of designing, manufacturing, engineering, and performing durability testing on the Class Vehicles' VC-Turbo engines, which would have occurred in 2021 before Nissan began selling the Class Vehicles in Fall 2021, Nissan necessarily would have gained comprehensive and exclusive knowledge that the Class Vehicles' engines cause the Class Vehicles to emit gasoline fumes. Thus, during the pre-release analysis stage of the Class Vehicles, Nissan would have known

that the Class Vehicles' brand new VC-Turbo engines were defective, and would pose a hazard to owners/lessees, and the motoring public. Despite that such testing on the Class Vehicles revealed the Gas Fumes Defect to Nissan, Nissan failed to remedy the manufacturing processes with the Class Vehicles' VC-Turbo engines before putting the vehicles into production and selling them to the public.

99. Nissan also knew about the Gas Fumes Defect because numerous consumer complaints regarding engine-related issues (e.g., the Class Vehicles emitted strong gas odor) were made directly to Nissan, and its authorized dealerships. The large number of complaints, and the consistency of their descriptions of engine issues alerted Nissan to this serious Defect affecting the Class Vehicles. The full universe of complaints made directly to Nissan about the Gas Fumes Defect is information presently in the exclusive custody and control of Nissan, and is not yet available to Plaintiffs prior to discovery. However, upon information and belief, many Class Vehicle owners complained directly to Nissan and Nissan dealerships and service centers about the continuous emission of gasoline fumes by their Vehicles.

100. Moreover, because the Gas Fumes Defect can and does manifest almost immediately – often within weeks of the Class Vehicles first being driven – Nissan began receiving notification of the higher than expected number of Defect complaints made to Nissan dealers merely within weeks after Nissan began selling the Class Vehicles.

101. Further, upon information and belief, since it began selling the Class Vehicles, Nissan has been tracking the performance of its VC-Turbo engines particularly closely because it is a brand-new engine built at its assembly plant in Decherd, Tennessee, which

supplies such engines for all of the Nissan's U.S. assembled Class Vehicle models.⁵

102. Moreover, in January 2023, Nissan issued to its authorized dealers a document titled "Nissan Talk Tip Rogue Fuel Odor, Reference: NTT/23-025" wherein Nissan advised its authorized dealers that "[o]n some MY2022 and newer Nissan Rogue vehicles equipped with 3-cylinder engine, an odor of gasoline may be noticed in and/or around the vehicle with no Malfunction Indicator Lamp (MIL), or Diagnostic Trouble Codes (DTCs) stored." Nissan instructed its dealers to document customer complaints of fuel odor and acknowledged that this defect is being investigated by Nissan.

103. Given the time it takes Nissan to gather relevant data, compile relevant consumer complaints and investigate such fuel odor complains, and then prepare and release the above 'Talk Tip' to its authorized dealerships, the January 2023 "Nissan Talk Tip Rogue Fuel Odor, Reference: NTT/23-025" bulletin establishes Nissan had knowledge of the Gas Fumes Defect in the Class Vehicles prior to selling the Class Vehicles to Plaintiffs.

104. Subsequently, on June 21, 2023, Nissan issued a Technical Service Bulletin ("TSB") NTB23-055 titled "Fuel Odor." The bulletin applies to 2021-2023 Nissan Rogue Vehicles and instructs Nissan dealers to replace the PCV hose whenever owners complain of fuel odor and there is no malfunction indicator light lit and no diagnostic trouble codes stored.

Customer Complaints and Online Discussions of the Defect:

105. Upon information and belief, thousands of purchasers, and lessees of the Class Vehicles have experienced the Gas Fumes Defect. Given how widespread the issue is and the fact that the defect manifests shortly after owners begin driving the vehicles, Class Vehicle

⁵ <https://usa.nissannews.com/en-US/releases/release-9eea16a47c78109cfe96b677a005fc7e-2022-rogue-to-feature-nissans-all-new-15-liter-vc-turbo-engine> (last visited March 29, 2023).

owners have been complaining about the Gas Fumes Defect directly to Nissan since Fall 2022, if not sooner, and have been posting such complaints online since at least November 2022. For instance, on November 25, 2022, a Class Vehicle owner wrote on a Nissan Rogue-enthusiast website, “I also noticed a smell of gas in the cabin of the Rogue?” and inquired whether “anyone else experienced these issues?”⁶ Same Class Vehicle Owner later wrote that he took his vehicle to a Nissan dealer and complained of gas smell, to which dealership responses the smell was due to fumes and that it found no leaks,⁷ and same gas smell persisted.⁸

106. On January 4, 2023, another Class Vehicle owner responded that they too smelled gas inside their car and complained to a Nissan dealership, to which they received a response that “Nissan is aware of the issue and that the Rogue is under Engineering Review” and “that there was nothing else to do until Nissan issues a recall or figures out a fix for wherever the gas is leaking.”⁹

107. Same day, on January 4, 2023, another Class Vehicle owner shared having the same experience of smelling gas which a Nissan dealership confirmed but undertook no repair.¹⁰

108. Similarly, on December 20, 2022, another Class Vehicle owner inquired on a

⁶ <https://www.nissanforums.com/threads/2023-rogue-questions.278985/> (last visited April 11, 2023).

⁷ <https://www.nissanforums.com/threads/2023-rogue-questions.278985/post-1735858> (last visited April 11, 2023).

⁸ <https://www.nissanforums.com/threads/2023-rogue-questions.278985/post-1736015> (last visited April 11, 2023).

⁹ <https://www.nissanforums.com/threads/2023-rogue-questions.278985/post-1736112> (last visited April 11, 2023).

¹⁰ <https://www.nissanforums.com/threads/2023-rogue-questions.278985/page-2> (last visited April 11, 2023).

Nissan Rogue-enthusiast website whether other Class Vehicle owners experienced their cabins filling with gas fuel smell and added that when parking in his garage within ten minutes whole garage smelled like gas.¹¹ He added that he complained to a Nissan dealership repeatedly of smelling gas to which dealership responded it had numerous other Class Vehicle owners complaining of same defect and that Nissan was investigating but had no fix.¹²

109. In response, numerous other Class Vehicle owners posted experiencing the same gas fuel smell in their vehicles too, complaining of the defect to the Nissan dealerships and the Nissan directly, but receiving no relief.¹³

110. Likewise, dozens of Class Vehicle owners voiced on Facebook their frustration with receiving no repair when they complained about gas fuel smell to the Nissan dealerships.¹⁴

111. Moreover, a Nissan dealership technician reported that the Nissan TechLine database “is littered with cases” of Class Vehicle owners complaining of fuel smell issue and that Nissan does not have a fix and merely instructs its dealers to document instances of Class Vehicle owners complaining of fuel smell.¹⁵

112. Furthermore, Class Vehicle owners have consistently lodged NHTSA

¹¹ <https://www.nissanforums.com/threads/23-rogue-awd-sv-fuel-smell-in-cabin-and-garage-after-parked.279125/> (last visited April 11, 2023).

¹² *Id.*

¹³ *Id.*; *see also* <https://www.nissanforums.com/threads/2023-rogue-gas-leak-gas-fumes-engineering-review-recall.279189/> (last visited April 11, 2023).

¹⁴ <https://www.facebook.com/groups/837297303796997/permalink/1270545243805532/> (last visited April 11, 2023);

<https://www.facebook.com/groups/837297303796997/permalink/1322708141922575/> (last visited April 11, 2023);

<https://www.facebook.com/groups/837297303796997/permalink/1317739372419452/> (last visited April 11, 2023);

¹⁵ <https://www.nissanforums.com/threads/2023-rogue-gas-leak-gas-fumes-engineering-review-recall.279189/page-2> (last visited April 11, 2023).

complaints regarding the Gas Fumes Defect. The below example complaints, filed by consumers with NHTSA and posted on the Internet, which on information and belief Nissan actively monitored during the relevant time period, demonstrate that the Gas Fumes Defect is widespread and dangerous and that Nissan has known about the defect at all relevant times:

- NHTSA Complaint No. 11496829, December 9, 2022 (2022 Nissan Rogue): “My car smells gasoline inside and outside. I brought the car to the service dealer but the service manager said that they cannot figure out where gas odor coming from. I am using my car in bringing my 2 kids to school and going to work. My kids are getting sick and I am afraid my car will cause fire.”
- NHTSA Complaint No. 11498633, December 23, 2022 (2023 Nissan Rogue): “When driving vehicle cabin will fill with a fuel odor which can make you nauseous. In order to prevent the vents need to be on recirculat which in turn fog up all the windows in the winter time. Also when vehicle is parked in garage it fills the garage with an extremely strong fuel odor. Has been to the dealer 3 times, 2 times they couldn’t reproduce and the 3rd time they can’t find the problem. Nissan is aware and has it under ‘engineering review’ with multiple claims from other owners.”
- NHTSA Complaint No. 11499442, December 29, 2022 (2022 Nissan Rogue): “For several weeks I have noticed strong smell of gasoline when my car is parked in my garage. Today, I called my Nissan dealer because I am very concerned. The service advisor informed me that they have received many similar complaints and Nissan is supposedly trying to identify and remedy the problem. He said my car is safe, but I am terribly concerned.”
- NHTSA Complaint No. 11499566, December 30, 2022 (2022 Nissan Rogue): “The contact owns a 2022 Nissan Rogue. The contact stated while the vehicle was parked in the garage, he started to smell and abnormal fuel odor. The contact stated no warning light was illuminated. The contact took the vehicle to the local dealer but was unable to determine the cause of the failure. The vehicle was not repaired. The manufacturer had been informed of the failure. The failure mileage was approximately 3,000.”
- NHTSA Complaint No. 11500268, January 5, 2023 (2023 Nissan Rogue): “The contact owns a 2023 Nissan Rogue. The contact stated there was an abnormal fuel odor inside and outside the vehicle. Upon inspecting the vehicle, the contact found no visible leaks coming from the vehicle. The vehicle was then taken to the dealer where the mechanic also could not detect any leaks coming from the vehicle. The manufacturer had been notified of the failure and provided a case number. The vehicle was not repaired. The failure mileage was approximately 2,000.”

- NHTSA Complaint No. 11501655, January 13, 2023 (2022 Nissan Rogue): “Vehicle has raw fuel smell, both outside and inside. Smell intensity varies, sometimes it is faint, sometimes it smells up the whole garage for days. When restarting the vehicle after having driven it, fuel smell comes into the cabin from the air vents. Took to dealer multiple times. The first time, the Service Advisor noted the strong fuel smell. Subsequent visits to the dealer had faint fuel smell that was hard to detect over the typical odors in a repair shop. Opened a case with Nissan, and they sent a tech, but no resolution. Requested a re-purchase, and Nissan denied it. Nissan states this 1.5L engine is under Engineering Review, but they do not know if or when they will figure out a repair. This vehicle is an extreme health hazard with the exposure to hydrocarbon vapors, and is not safe to drive as an engine fire could result from the gas vapors. Issue started a month ago at 1100 miles.”
- NHTSA Complaint No. 11501676, January 13, 2023 (2023 Nissan Rogue): “Strong gas odor in cabin of vehicle emanating from air cleaner housing. Also strong gas smell outside of vehicle after and while driving. Smell is very strong and causes dizziness, nausea and headaches.”
- NHTSA Complaint No. 11501807, January 14, 2023 (2022 Nissan Rogue): “There is a strong smell of gasoline a few minutes after parking the vehicle in my enclosed garage. The smell is strongest on the drivers side, near base of the windshield and along the left side of the hood. This problem occurs every time I drive the vehicle more than 20 mins and then park it in an enclosed garage. 10 mins after parking it, the garage smells like spilled gasoline. I took the vehicle at 2,200 miles to a dealer and they stated that they were unable to duplicate the problem. They asked me to return the vehicle at 5,000 miles if I still had the problem.”
- NHTSA Complaint No. 11501824, January 15, 2023 (2022 Nissan Rogue): “For roughly the last three months, several times I have smelled fuel or gas in the interior cabin. Mostly at startup for first time during morning. But also when starting car after use earlier in the day. The smell dissipates after 10 minutes or so. Especially if I roll down windows to let in fresh air. Please let me know how address because dealer will not see issue as it does not occur with a defined pattern that I recognize. I did notice that when the gas tank was near empty the smell was very strong - and I was driving car for several minutes before the odor started. This issue is not healthy for breathing and I’m worried about it getting worse and becoming a safety issue.”
- NHTSA Complaint No. 11502021, January 16, 2023 (2022 Nissan Rogue): “There is a strong unburied fuel smell on occasion. The dealer says that they are waiting for Nissan engineering to provide a repair and that it would be ok to drive.”

- NHTSA Complaint No. 11502157, January 17, 2023 (2022 Nissan Rogue): “After 9 months of owning this car. When I drive for 20 or so miles and turn the vehicle off for a short period then restart I smell gas and fumes make me sick and my eyes water at times. The dealer found nothing wrong. Nissan corporate got involved after I emailed them. Their engineering tech confirmed it was happening.”
- NHTSA Complaint No. 11502315, January 18, 2023 (2022 Nissan Rogue): “My Vehicle has 3,700 miles on it and i have smelled a very intense fuel smell in the cabin of the vehicle at least 6 times mostly when the interior fan is not set to recirculate the air, i took the vehicle to my local nissan service center and they could find no issues but said this is a complaint that others have also made. I am concerned that there could be a fire from the fumes that are being released.”
- NHTSA Complaint No. 11502725, January 19, 2023 (2023 Nissan Rogue): “First issue: After starting the vehicle there can be a smell of gasoline in the passenger cabin for a little bit. Also after parking vehicle in garage and turning off engine, the garage smells of gas and remains overnight, it is not exhaust fumes. Sometimes it seems to be worse after driving in reverse. There is no sign of a liquid leak on the undercarriage or on the floor. Happens whether the gas tank is full or near empty. Vehicle is only 2 months since purchase”
- NHTSA Complaint No. 11502732, January 20, 2023 (2022 Nissan Rogue): “Gas smell after driving. Dealer replaced EVAP canister valve but still fills my garage with smell.”
- NHTSA Complaint No. 11503291, January 23, 2023 (2023 Nissan Rogue): “After about two months of driving our 2023 Nissan Rogue SV, a fuel odor emerged from the car. The odor is detected constantly in the car’s interior and exterior. The fuel odor is so intense that we are concerned about the safety of parking the vehicle in our garage; we must park it outside. Due to the intensity of the fuel odor, we have purchased a fire extinguisher, as we are afraid of a car fire in the event of an accident/collision. Additionally, we are very concerned about our exposure to the gas fumes, and the health risk it may be causing. The dealership we bought the vehicle from evaluated the car, and informed us that the issue was that gas was sprayed accidentally on the hood liner during production. The dealership replaced the hood liner; however, upon returning the vehicle home the same day, the fuel odor persisted with the same intensity, and it did not fix the problem. The problem occurs after driving the vehicle, and the technician, who did the repair, must not have driven the vehicle.”
- NHTSA Complaint No. 11503128, January 23, 2023 (2023 Nissan Rogue): “Fuel smell from engine compartment that enters cabin if heat turned on. Took to dealer, nothing showed up on computer. Unable to see leak, or evidence of fuel leak. Started about 2 months ago. Was reported to Nissan who states that it’s under engineering review. Fuel smell lingers for a couple hrs after parked in garage.

Concern for health exposure to fumes and potential engine fire hazard. No check engine warning lamps.”

- NHTSA Complaint No. 11503767, January 26, 2023 (2023 Nissan Rogue): “After about the 3k miles mark, I started noticing a raw gas smell on the interior of the cabin when driving the vehicle. I also notice this gas smell when my vehicle is parked in my garage, with the engine off. I brought it to my local Nissan dealer, and they confirmed that it is a known issue 3 other 2023 Rogue customers have reported to this dealership. They did a visual inspection for leaks, and ran a computer diagnostic but nothing was found. At this point they informed me that corporate Nissan is aware of the issue and until they find the root cause of the problem, and issue a recall there is nothing my dealer can do.”
- NHTSA Complaint No. 11504244, January 28, 2023 (2023 Nissan Rogue): “Smell of gas after driving.”
- NHTSA Complaint No. 11504489, January 30, 2023 (2022 Nissan Rogue): “Gas fumes from engine compartment – after the car has been driven 20-30 mins enough to heat up the engine and then parked (turned off) for 10-15 minutes a strong smell of gasoline is detected, you can smell it either by sniffing in the front grill or if you start it and use the outdoor air circulation in the cabin it will come through the vents. There are enough fumes to fill a 1 car garage in 30 mins with a thick odor of gasoline. The fumes are nauseating and cause headaches. My salesman at Hawk Nissan suggested changing gas to a top tier brand so I starting using Mobile but no help with the fume issue. After speaking with a service manager at Woodfield Nissan, he said that he’s had a few cars come in recently with the same problem. Nothing is showing up mechanically so they chalked it up to a “break-in period” and/or possibly a coating used in manufacturing. Brought it back to Woodfield Nissan a couple weeks later stating the oil dipstick has a strong smell of gasoline same smell I get in the cabin and around the car. He found nothing unusual with the oil smell. I took it into Hawk Nissan Oct 2022 with 800 miles now with 2943 miles still having the issue. Not sure if this is affecting my MPG but I'm only getting 18-20 MPG mix of city & highway driving. Recently I'm seeing a lot of the same complaints with the 2023 models.”
- NHTSA Complaint No. 11504729, January 31, 2023 (2023 Nissan Rogue): “This is my 2nd 2023 Nissan Rogue. The first one was purchase in October 2022 Around Thanksgiving 2022 we started smelling gas inside the car and outside the car. After the dealer confirmed the smell and told us there was no fix at the time, we left car at dealership and took a loaner, several weeks later the dealer said there is still no fix. We went to dealer and bought another 2023 Nissan Rogue at approximately 800 miles we started smelling the fumes in the cab and outside the vehicle.”
- NHTSA Complaint No. 11505455, February 3, 2023 (2023 Nissan Rogue): “There is a constant strong fuel odor coming from the car, especially when it is parked

inside the garage. It is most noticeable under the front hood as well as inside the cabin. The car has been inspected by the Nissan dealer and they have not found any leaks. They did confirm that this is a known concern, which is under engineering review and the dealership is working with a specialist to address this. They have also informed us the smell is caused by colder temperatures as more fuel needs to be injected than normal and thus causing the strong odor. However, the smell is constant even in warm temperatures. Also, a Nissan engineer has confirmed that this is caused by a design flaw, which only appears on cars with a turbo.”

- NHTSA Complaint No. 11505449, February 3, 2023 (2023 Nissan Rogue): “Vehicle smells of strong gas smell in the cab and around the vehicle. Smell is so strong it makes you feel light headed and gives you a headache. This is a huge health concern for me and my family. When parking in the garage it smells so strong that you have to then park it outside so you do not have a fire hazard in the garage. Took it to the dealership to have diagnosed and was told that Nissan is aware of the issue and it is under engineering review but there is nothing they can do at this time. I then reached out to Nissan consumer affairs and they denied a buy back and told me that it is under engineering review but they do not have a fix for it. If they do not have a fix they should buy it back. This is a huge safety and health concern for me and my family.”
- NHTSA Complaint No. 11505610, February 4, 2023 (2022 Nissan Rogue): “We bought our 2022 Rogue in September 2022, it now has around 5300 miles on it. In December, we noticed that every time we drive it, the inside of the car fills with gas fumes. The fumes are so strong that it gives us extreme headaches, dizziness and nausea. When we park the Rogue in our garage, it creates a strong gas smell. We are concerned that it could explode or cause a fire. The vehicle was taken to Ron Sayer Nissan in Idaho Falls, Idaho on February 4, 2023 for diagnosis. The service manager, [XXX], informed us after examining the vehicle that he did not know what is causing the strong gasoline odor. The dealership did nothing to repair the vehicle and the problem continues.”
- NHTSA Complaint No. 11505819, February 6, 2023 (2023 Nissan Rogue): “The smell of gas is so strong inside and outside of the cabin of the vehicle, that it is causing health issues. Nissan told me to put the car on air circulation as a temporary fix, but it is not working. My entire body is shaky and I’m suffering from migraines and nausea.”
- NHTSA Complaint No. 11506004, February 7, 2023 (2023 Nissan Rogue): “The contact owns a 2023 Nissan Rogue. The contact stated that while operating the vehicle, there was an abnormal fuel odor inside the cabin of the vehicle. Additionally, while parked in the garage, the fuel odor was also present outside the vehicle. Upon inspection, no leaks were found. The vehicle was taken to the local dealer who was able to confirm the fuel odor but was unable to identify the cause

of the odor. There were no repairs performed. The manufacturer was notified of the failure. The failure mileage was 500.”

- NHTSA Complaint No. 11506346, February 7, 2023 (2023 Nissan Rogue): “Good morning - I will be contacting the dealer today. I have a 2023 Nissan Rogue and there is a strong smell of gas in the cabin. I haven't purchased gasoline so it isn't that. It is coming from under the hood. My eyes burn I have a sore throat and am nauseous and dizzy. I looked it up online to troubleshoot and apparently it is a known issue however there isn't a recall. I've tried opening windows , closing them, recirculating the air nothing helps. Even after the car has sat for 8-9 hours it still smells inside and outside the car - edit I just called the dealer and they are backed up until next week. As far as the mph question, I can smell it when driving and parked.”
- NHTSA Complaint No. 11506596, February 10, 2023 (2023 Nissan Rogue): “When I park my 2023 Nissan Rogue in the garage, the garage fills with a strong gas smell. This happens about 50% of the time. There are no performance issues or warning lights involved. I took it to the dealership for assessment yesterday. They did not find evidence of a leak. They said Nissan is aware of this and is investigating and that there is no danger at this time. I believe this does create a health and safety risk to myself and my family and possibly to my home. They also reported that Nissan suggests this issue could be due to winterized gas. This response does not indicate that Nissan accepts responsibility or cares to solve this problem.”
- NHTSA Complaint No. 11507075, February 13, 2023 (2022 Nissan Rogue): “There is a strong smell of gasoline in the garage after I park my Rogue in it. We can smell it in the house. There is also the strong smell of gasoline in the cab when the car is idling, like when waiting in line or at a stop sign. This is not exhaust, it's fuel. I've had it checked once already during an oil change and am taking it back again tomorrow. This can't be safe to my health. Am also afraid it will set my house down on fire. Please help.”
- NHTSA Complaint No. 11507010, February 13, 2023 (2022 Nissan Rogue): “Known issue, fuel smell inside cabin after initial start up and after parking in garage. Fuel/exhaust smells are persistent while initially driving off as well, significant safety risk as we are not certain where this is emanating (or originating) from. This is a health hazard and could potentially lead to engine fire, etc.”
- NHTSA Complaint No. 11507262, February 14, 2023 (2022 Nissan Rogue): “Unknown Very strong gas smell inside the vehicle and outside the vehicle and under hood. This started with less the 4000 miles on it and it is just over 6200 miles at this time. I brought it to local nissan dealer lia nissan of Saratoga and was advised they can not find anything wrong with it and they can not do anything without a recall. So I am driving a vehicle around with excessive gas smell inside and out.

This seems dangerous to me. I did express my concern to both the dealership and nissan themselves and they still refuse to do anything. I asked what happens if I am in an accident and my car starts on fire or if I am driving and my car starts on fire. The service recep. Said well it looks like you will have a law suit. So don't think they realize this is not good. Breathing in gas is a health issue and this should be addressed and should not be ignored. These vehicles had gas issues the year prior so why isn't this a concern for nissan. This is a new vehicle smelling gas is a hazard and puts myself, my family and people driving around me at risk. Please consider reviewing this further. Thank you Jill Tracy.”

- NHTSA Complaint No. 11507480, February 15, 2023 (2023 Nissan Rogue): “I purchased a brand new 2023 Nissan Rogue. I can smell fuel when the car is in park. It is not exhaust either. It is fuel!!! The smell of fuel spreads into the house. We have health issues and are concerned about this problem. This is serious. We are also concerned that this could be a fire hazard as well.”
- NHTSA Complaint No. 11507700, February 16, 2023 (2022 Nissan Rogue): “I purchased my new 2022 Nissan Rogue a few months ago. I do not drive a whole lot seeing as I am working from home. Yet I have noticed on many occasions that after going out and running my errands, I come home and park in my garage and my garage smells of very strong gas fumes. Yesterday I brought my car in to the Nissan Dealership for its first oil change and the service attendant asked me how I was liking it. So, I brought it up to him about the strong gas smell in my garage after driving car. He informed me that this is not the first time that they have heard this. He said they are researching at this time but have not been able to locate the issue. He stated that they were thinking it was the winter gas and I said no way. If gas was the issue, why is it only the 2022 Nissan Rogue having an issue with the gas. Makes no sense. He stated there is no recall on it yet seeing as they cannot figure out the issue, but I will most likely be seeing a recall once they figure it out. They noted on receipt that ‘they were unable to duplicate concern, no fuel leak at fuel lines or tank. Nissan is aware of issue and seeking a remedy, customer will be notified.’ This is very scary to me, it is a strong smell, like there is raw gas leaking. I am afraid of it catching fire or just the fact of inhaling these fumes are not safe. This is a huge safety hazard and Nissan does not seem to care. Are they waiting for something horrible to happen before they take this seriously?”
- NHTSA Complaint No. 11508056, February 19, 2023 (2023 Nissan Rogue): “The cabin of the vehicle fills with a gasoline odor when driven. When I park the vehicle in the garage (with engine OFF), the garage fills with a gasoline odor. I have experienced nausea and headaches with the smell. My oldest child has complained about the smell and making his head hurt. It is very concerning that my ATTACHED garage fills with gasoline odor and could continue into my residence. I am now forced to park my vehicle outside and can not have my two children in the vehicle. I took the vehicle back to the dealership and they initially claimed it was an O Ring around the gasoline tank. They replaced it and the issue still continued. They then advised that Nissan is aware of this issue but does not have a

fix at this time. There are cases around the country with this issue. I am now using a loaner vehicle from the dealership until Nissan finds a fix. There is approximately 5,300 miles on the vehicle. There are no warning messages on the dash. This problem started at the beginning of January.”

- NHTSA Complaint No. 11508998, February 24, 2023 (2023 Nissan Rogue): “Strong smell of raw gasoline coming from the front of the vehicle after driving and while driving. If parked in garage entire garage has strong odor that penetrates into attached house. Very hazardous to health and emissions.”
- NHTSA Complaint No. 11509070, February 25, 2023 (2022 Nissan Rogue): “There is a very strong gas smell in the cabin coming through the vents. Opening windows doesn’t help as it is outside the vehicle as well. It smells like gasoline is actually covering the vehicle. Causes nausea & ightheadedness. Worried for health from breathing in the fumes and fire risk. Nissan service changed evap canister and problem persists. I bought the vehicle brand new and is an unresolved issue.”
- NHTSA Complaint No. 11509202, February 26, 2023 (2023 Nissan Rogue): “After 3000 miles on my car I noticed a gasoline smell in my garage after driving it. Now I have 5000 miles and the gasoline smell is so strong I have to park it outside my garage since my garage is attached to my house and the smell enters my house and makes me feel nauseous and gives me a headache. I have made an appointment with 2 Nissan dealers who state it is a known problem but there is nothing they can do about it at this time and are waiting to hear from Nissan. There are no warning lights on in my car.”
- NHTSA Complaint No. 11509497, February 28, 2023 (2023 Nissan Rogue): “SMELLS strongly of GAS. Location of smell is strongest on driver side closest to windshield under the hood. Vehicle is currently with 2280 miles. Purchased in December of 2022. Smell began mid January 2023 with mileage approximately at 1700.”
- NHTSA Complaint No. 11509730, March 1, 2023 (2023 Nissan Rogue): “The new Nissan Rogue I just bought has gasoline smell that comes into the cabin from the Engine compartment when driving at low speeds. I took the car to the dealer where I was told that Nissan was aware of the gas smell and are looking into a fix. I also called Nissan Corp. and was told that they are aware of the problem and that the gas fumes are not a danger. Also I was told that this is happening to some of the late 2022's and the 2023's. Nissan needs to get this problem fixed ASAP. This Is a safety and a health issue. Please Investigate. Thanks.”
- NHTSA Complaint No. 11509925, March 2, 2023 (2022 Nissan Rogue): “The vehicle has a very strong raw gasoline smell after driving. The smell is very noticeable both outside and inside of the cabin. This condition is becoming more

frequent the more it's driven. The odor is strong enough to make the driver lightheaded and nauseous. The vehicle was purchased new. Dealership is unable to diagnose and Nissan corporate continuously refers this issue back to the dealership."

- NHTSA Complaint No. 11510014, March 3, 2023 (2023 Nissan Rogue): "Fuel smell in garage on a regular basis. No gasoline or gas powered equipment is stored in the garage. The gasoline smell is noticeable when vehicle is warm after driving. Smell was first noticed soon after purchase of vehicle. We didn't really worry about it at first. But it continues to persist. Dealership is blaming it on spillage from gas pumps. The vehicle is currently at half tank, no noticeable smell from filler area. Smell is not noticeable when vehicle is cold. Gasoline odors are dangerous and possibly explosive. No warning lamps are visible or any symptoms shown by vehicle. Vehicle is being taken to dealership on 3/4/23 to be checked out."
- NHTSA Complaint No. 11509983, March 3, 2023 (2023 Nissan Rogue): "Fuel smell continues from engine compartment. Specifically after parked in garage and it is localized to the windshield gutter on drivers side. Started 2-3 months ago. Was reported to Nissan who state that it is under engineering review and there is no fix at this time When heater turned on, fuel smell gets into cabin . Concern for health exposure to fumes as well as potential fire hazard. Check engine warning light does not come on. Only 3000 miles on the car. Bought in September 2022."
- NHTSA Complaint No. 11510201, March 5, 2023 (2022 Nissan Rogue): "Gas fumes leaking into cabin. Garage smells like gas when vehicle is parked there. Nissan has no idea what causes this."
- NHTSA Complaint No. 11510926, March 9, 2023 (2023 Nissan Rogue): "After driving the car and parking it in the garage we notice a "raw gasoline" smell. If we are driving and idle at a stop sign the heater (heating the interior) picks up the gasoline smell and the fumes come inside the car. We have to open the windows to air it out once moving. The problem appears to be getting worse, meaning the smell is getting stronger. We have contacted Nissan and they gave me a case number #48234302, but no progress. The dealer says Nissan is working on the issue, but there is no fix. I have call both Nissan and the dealer since 1-18-2023, but for the most part no one will respond anymore. We find the smell a health concern."
- NHTSA Complaint No. 11511676, March 13, 2023 (2023 Nissan Rogue): "Strong smell of gasoline in our garage, coming from the 2023 Nissan Rogue everytime we park the car. Fumes/vapors fill the garage, and then into the house."
- NHTSA Complaint No. 11511851, March 14, 2023 (2022 Nissan Rogue): "I smell gas inside my car. I take the car to the dealer they check everything but they say they can't fix it. They know about the leak and they say it's hopping on the Nissan's

2022 and 2023 . They know about the problem with those cars but they still sell sold them to the people.”

- NHTSA Complaint No. 11513040, March 21, 2023 (2022 Nissan Rogue): “Vehicle smells of strong gas smell in the cab and around the vehicle. Smell is so strong it makes you feel light headed and gives you a headache. This is a huge health concern for me. When parking in the garage it smells so strong that you have to then park it outside for a couple hours after driving so you do not have a fire hazard in the garage. Took it to the dealership to have diagnosed and was told that they can't find a problem however now I'm see reports that Nissan is aware of the issue and it is under engineering review but there is nothing they can do at this time. I then reached out to Nissan consumer affairs which was absolutely no help at all. This is a huge safety and health concern for me.”
- NHTSA Complaint No. 11513524, March 23, 2023 (2022 Nissan Rogue): “Smell of gasoline inside my car while driving and when parked inside my garage .Brought to the dealer and said to me that the are many car owners of the same model who are complaining of the same problem but they cannot fixed it at this time and will just call me if they will find solution of the problem but until now the dealer haven't call me back.The problem is getting worse and it is a significant fire hazard in my car and also in my garage.”
- NHTSA Complaint No. 11513772, March 25, 2023 (2023 Nissan Rogue): “When parked and off, or sitting in idle a major smell of gasoline is spewing out of the hvac system in the car. It makes me nauseous and major headaches. This can't be safe to drive. This has always been an issue. I've only owned the vehicle since December.”
- NHTSA Complaint No. 11514310, March 28, 2023 (2023 Nissan Rogue): “After driving the inside cabin smells like fuel along motor area and around front of car. No noticeable leaks. Dealer said no noticeable leaks, called Nissan Tech line, tech line had them check a few specific areas believe some pressurized fuel lines. Service manager said it is a known issue with no current fix although Nissan engineers are working on it. Both service manager and service advisor recommended calling Nissan of North America. Issue started Feb 2023. Motor air filter smells like gas along with the oil in the motor when smelled from dipstick.”
- NHTSA Complaint No. 11514692, March 30, 2023 (2023 Nissan Rogue): “For months now, inside the cabin and outside of the car smell like raw fuel. I have taken it to Nissan and they were unable to find anything wrong. There are times I have to roll down the window because the smell is so strong. This is an almost everyday occurrence.”

- NHTSA Complaint No. 11516032, April 7, 2023 (2023 Nissan Rogue): “The smell of gas fumes was inside and outside of the car. I took a CO2 blood test and the CO2 levels came back high. The dealership said a recall was coming out soon. The vehicle supposedly was looked over by the dealership service manager. This began shortly after I bought the vehicle. Didn’t know it was an issue until I saw a lawsuit against the company regarding this matter.”
- NHTSA Complaint No. 11515891, April 7, 2023 (2023 Nissan Rogue): “Once I park my car in garage after a while my whole garage smells like gas. This started the end of March being an issue. The car has 1212 miles Tonight I backed it out of garage because the smell was so strong. I do have an appointment with Billion Dealership on April 15th hoping to resolve the issue.”
- NHTSA Complaint No. 11516075, April 8, 2023 (2023 Nissan Rogue): “Another night of leaving my new car outside instead of in garage because of the gas smell. I believe it is very dangerous and I have family staying with me. I’m scared it could start a fire.”
- NHTSA Complaint No. 11517262, April 16, 2023 (2022 Nissan Rogue): “After driving the vehicle, we’ll notice a gas smell coming from the car when parked in the garage. There is no leak or any issues with the vehicle running. Sometimes the odor is minimal and sometimes very strong. Nissan has reported awareness of this and is looking for a fix.”
- NHTSA Complaint No. 11517729, April 18, 2023 (2023 Nissan Rogue): “I purchased my 2023 Nissan Rogue SV in Oct of 2022. After a few weeks of parking in the garage I noticed the smell of raw gas in my garage. At about 1000 miles I noticed the smell of raw gas while driving slowly through the neighborhood and while stopped at stop signs and traffic lights. I brought the car back to the Nissan dealership where I purchased it from and explained I was smelling raw gas. The dealership told me there was a break in period and after about 5000 miles I should notice improved gas mileage and the quote "weird" smells should go away. I now have 7,200 miles on the car and the raw gas smell is far worse to the point of causing me headaches and nausea. I cannot park in the garage anymore because it makes even my house smell of gas. I now fear of explosion from gas fumes. I would trade the vehicle for something safer but at this time can not afford to do so.”
- NHTSA Complaint No. 11517723, April 18, 2023 (2023 Nissan Rogue): “There is a strong smell of gasoline inside the vehicle when driving. There is also the smell of gas coming from the engine when the vehicle is parked in a garage. The dealer stated this is a known problem with the 2023 Rogue but there is no fix to the problem. They just state Nissan is aware of the problem. The smell causes headaches while driving and the fear is it is a fire hazard.”

- NHTSA Complaint No. 11517804, April 19, 2023 (2023 Nissan Rogue): “Within a week of driving the vehicle, I began to notice a strong gasoline smell when I parked the car. The issue became even more evident when I parked the car in my garage, as the garage would quickly fill with the unmistakable odor of gasoline. The smell is so persistent that it remains in the garage even the following morning. Due to concerns about the accumulation of gas fumes and the potential risk of ignition, I have resorted to parking the car outside. However, the issue extends beyond just parking; when I am stuck in traffic or idling, the gas fumes infiltrate the cabin of the vehicle, producing a strong and overpowering odor. The intensity of the fumes is such that it induces feelings of nausea, and I am deeply concerned about the health and safety implications for both me and my family. Despite being aware of the severity of the situation, I am left with limited options as I do not have an alternative vehicle to use for transportation. In an effort to address this matter, I contacted both the Nissan Dealership where I purchased the vehicle and Nissan Consumer Affairs. Disappointingly, both parties have informed me that there is nothing they can do at this time and that I must wait. I found it particularly disingenuous when the representative from Consumer Affairs referred to the issue as merely a "foul odor," downplaying the seriousness of the matter. I want to emphasize that this is not just a foul odor; it is a clear and hazardous smell of gasoline. I am reporting this issue to the National Highway Traffic Safety Administration (NHTSA) to document my experience, raise awareness of the safety risks, and seek assistance in finding a resolution. The presence of gasoline fumes in and around the vehicle is alarming, and I believe immediate action is necessary to address this matter and ensure the safety of all drivers and passengers of the 2023 Nissan Rogue.”
- NHTSA Complaint No. 11518063, April 20, 2023 (2022 Nissan Rogue): “The contact owns a 2022 Nissan Rogue. The contact stated that a few months after she purchased the vehicle, she noticed an abnormally strong gasoline odor inside and outside the vehicle. No warning lights were illuminated. The vehicle was taken to the dealer where the vehicle was inspected, but no failure was found. The contact stated that the odor became extremely strong. The vehicle was taken to another dealer where the contact was informed that the manufacture was aware of the issue; however, there was no remedy, and that the cause of the odor was due to the winter gasoline blend. The contact stated that she was concerned that the fuel odor might cause a fire. The vehicle was not repaired. The manufacturer was notified of the failure and the contact was provided a case number and advised to call the NHTSA Hotline. The failure mileage was approximately 7,000.”
- NHTSA Complaint No. 11518354, April 21, 2023 (2023 Nissan Rogue): “I am the owner of a 2023 Nissan Rogue with 3,500 miles on it. During the last few weeks I have noticed a strong smell of raw gas entering the passenger compartment while driving. It happens with or without the HVAC system working. Sometimes it is stronger than other times. I have opened up the hood and have found no visible leaks. There are also no leaks under the vehicle. I have researched this issue on the internet and have found several sites with similar complaints. There also appears to

be a new class-action lawsuit being reviewed about this issue. Many consumers have brought their vehicles into the dealers for this issue with no results. It appears that the situation is under review by Nissan. I urge the NHTSA to look into this matter due to the safety risk to consumers. Thank you.”

- NHTSA Complaint No. 11518768, April 24, 2023 (2023 Nissan Rogue): “Strong odor of gas both inside and outside the vehicle. Vehicle was taken to dealership for warranty repair and dealership stated there is a known issue with the 2023 Rogue however Nissan does not know what the issue is or how to fix it but they are working on a fix. Over one month later and multiple conversations with consumer affairs they are refusing to fix or replace the car. There are health concerns as we drive a lot and experience headaches and dizziness from the smell as well as the safety concerns as they have no idea what is causing the odor and gasoline is highly flammable. ***Note on the 2nd visit to dealership they were able to duplicate the odor.”
- NHTSA Complaint No. 11518687, April 24, 2023 (2023 Nissan Rogue): “The 2023 Nissan Rogue which we bought in January 2023 smells of exhaust inside the car while running. We have experienced it when the car was just being started up after being parked and also while driving. It is off and on and hard to replicate for dealer. The exhaust smell is so strong that windows have to be opened and it is still nauseating. The garage smells of gasoline sometimes when the car is parked and off. This is also off and on. We bought this car for college age student to drive and are concerned about health issues from breathing in the exhaust as well as fire concerns.”
- NHTSA Complaint No. 11520585, May 5, 2023 (2023 Nissan Rogue): “After about 1000 miles I started noticing a gasoline smell inside and outside the vehicle. When I return the vehicle to my garage after driving and let it sit for awhile the garage reeks of the smell of gasoline. This smell has been noticed by many other people in and around the vehicle. I brought it to the Nissan dealership. They checked the fuel system for any leaks, found none and sent me home. I have lung issues and this gasoline odor is affecting my breathing when in and near the vehicle.”
- NHTSA Complaint No. 11520726, May 6, 2023 (2023 Nissan Rogue): “There is a strong odor of gasoline in the cabin of the vehicle when driving. The gasoline smell is also strong in the front of the car. I cannot park the vehicle in the garage due to the smell. I am afraid of a fire. I contacted Nissan who said they were aware of this issue and said they were investigating, but have no solution. Even though they have been aware of this issue since the 2022 model came out and never contacted me and continued selling the vehicle. I took the car to Mankato Nissan for inspection who verified the odor but said they could not find anything and had no solution.”
- NHTSA Complaint No. 11520998, May 8, 2023 (2023 Nissan Rogue): “There is a strong odor of gasoline outside of the parked vehicle (especially in a garage or

enclosed space) and a milder similar smell inside of the cabin, that can lead to a burning sensation in the nose and throat when driving the vehicle, especially when driving for more than 20-30 mins.”

- NHTSA Complaint No. 11520912, May 8, 2023 (2023 Nissan Rogue): “ON SEVERAL OCCASIONS IN THE PAST 2 WEEKS MY NISSAN ROGUE WHILE IN THE IDLING/PARK POSITION WILL GET A BAD GAS FUME SMELL INSIDE THE VEHICLE. I DID CALL FERRARIO NISSAN IN SAYRE PA AND TOLD THEM ABOUT THE SITUATION. THE SERVICE DEPT, PERSONELL TOLD ME THAT IF ITS NOT A CONSTANT SMELL THAT THEY CANNOT REALLY DO ANYTHING ABOUT IT. THEY TOLD ME TO STOP IN WHEN IT HAPPENS, BUT USUALLY IN JUST A FEW MINUTES WHEN PUTTING IT BACK IN THE DRIVE POSITION THE SMELL WILL GO AWAY. THIS SCARES ME THAT THE ROUGUE MIGHT CATCH ON FIRE OR THE SMELL MAY CAUSE HARM TO ME OR MY GRANDCHILDREN BY BREATHING IT IN. SOMETHING NEEDS TO BE DONE ABOUT THIS, THANK YOU, [XXX] INFORMATION Redacted PURSUANT TO THE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C. 552(B)(6).”
- NHTSA Complaint No. 11521417, May 10, 2023 (2022 Nissan Rogue): “I have leased this vehicle since May 13, 2022. Soon after taking delivery, I started to notice a faint smell of gasoline every day when it is enclosed in my garage. The smell has been getting stronger and I am very concerned. There have been times when I can now smell the gasoline when I enter my car when it has been parked outside. I did take it back to my dealer and informed them of my concern. They told me there was no viable leaks and said Nissan is aware of the problem but there is no fix at this time. My dealership has tried to assure me that the vehicle is safe. I have gone on Nissan Rogue owner forums and many owners have the same complaint but no resolution. This morning the smell of gasoline in my garage was very strong. How can this be safe for my health and for the risk of fire?”
- NHTSA Complaint No. 11521466, May 11, 2023 (2023 Nissan Rogue): “The contact owns a 2023 Nissan Rogue. The contact stated that while driving at undisclosed speeds, the odor of fuel was present inside the cabin of the vehicle, causing the contact to become ill. The vehicle was taken to the local dealer who was unable to determine the cause of the failure. The manufacturer was notified of the failure, but no assistance was offered. The failure mileage was 300.”
- NHTSA Complaint No. 11523990, May 24, 2023 (2023 Nissan Rogue): “Friday, March 24, 2023 AM: Returned to parked Rogue after an 1.25 hr appt and found the cabin reeking of a fuel smell. No fuel leaks under vehicle to explain smell. Smell dissipated some after driving for 10 mins at low speeds with outside air circulation on. Smell fully left cabin while driving at highway speeds for 15 mins with outside air circulation on. Sunday, March 26, 2023 AM: Returned to parked Rogue after 2 hr Church to find cabin filled with a fuel smell. Again, no leaks noted under vehicle.

Drive home decreased the smell at highway speeds with outside air circulation on, but this was after the entire family had already become ill from the smell while driving through town at lower speeds. Stopped at parent's house briefly and left engine running; husband had to turn engine off and roll windows down, as the fuel smell entering the cabin became really strong and was making husband and son ill again. Noted the fuel smell emanating from all around the vehicle for several hours after getting home, with the strongest smells coming from the engine area. Monday, March 27, 2023 AM: Brought vehicle back to dealership, 70+ mile drive, to have their service center look at it due to health and safety concerns. No fuel smell detected when entered vehicle before journey, drove down with recirculated air on, and only detected a faint fuel smell coming from the engine compartment upon arrival at service center. Performed a visual inspection, specific fuel & emissions system exam, complete high pressure fuel system test, fuel leak/odor pinpoint diagnostic. No failed or defective components found. They were "unable to verify the customer's concern of fuel odor at this time." Mfg service bulletin found on issue; no repair options yet. Fuel smell now constant, whether parked or driven. Recirculate air only used. Can't open windows without smell entering. Continued concern for health/safety.”

- NHTSA Complaint No. 11525677, June 6, 2023 (2023 Nissan Rogue): “When driving in stop and go traffic, the cabin of my Nissan Rogue gets a strong smell of fuel. After driving it, I park in my garage and the entire garage smells like gasoline as well. There is no other source for this smell in my garage. I have taken it to the dealership looking for a gasoline leak and they said it is not leaking, yet I smell gasoline while driving as well as when it is parked inside the garage and outside in parking lots.”
- NHTSA Complaint No. 11526600, June 12, 2023 (2023 Nissan Rogue): “After driving my 2023 Nissan Rogue for approximately 1.5 months (1700 miles) I started smelling a gas odor inside the cabin while driving and while parked. The smell is causing my eyes and throat to burn and occasional nausea. While parked in my garage the smell becomes so overwhelming that I must remove the vehicle from the garage to "air out" for a few hours. Since I have an attached garage the smell is also permeating the house. My husband checked the oil dipstick and found it to have a very strong gasoline odor. I have taken the vehicle to the dealer. I was told the smell is normal since this is a new turbo engine, it should be expected. I have contacted Nissan corporate regarding a fix or buyback and was told that I do not qualify. I have concerns regarding my health due to long term exposure to VOCs. I have safety concerns related to VOCs accumulating in my garage. I have mechanical concerns do to the inadequate venting of gasoline and gasoline in my oil. Will this cause the engine and other parts to fail?”
- NHTSA Complaint No. 11534562, July 26, 2023 (2023 Nissan Rogue): “Car smells like gas inside the cabin. Many people have posted throughout varies forums about the occurrence. I took the vehicle to my Nissan dealership and they had a bulliten

saying replace the PVC blower hose assembly. Part is on order until next week when I will have it installed. One person in a forum suggested checking the oil dipstick to see that the oil itself smells of gas. I did so on my vehicle and confirmed a gassy smell in the oil.”

- NHTSA Complaint No. 11535285, July 30, 2023 (2023 Nissan Rogue): “Brand new car, picked up July 19 2023, 1st issue) July 22, 2023: 3 Days after i picked up my car, went for a long drive to Phoenix AZ from Tucson AZ. Parked in a corner mall for an hour, drove out from parking lot and we smelled strong gas odor. Checked A/C recirculation and it is set to RECIRCULATION. Drove for a couple miles and it was gone. 2nd issue) July 25, 2023. Going to work, already driven 1 and half miles away from my house. My A/C was set to 72c in Auto and on Sync, never changed it to anything else. My A/C Screen randomly shuts off and turned off the whole a/c system including fan. I it automatically resets and turned on after 1-2 seconds and it was defaulted to 75c with Sync off.”

113. Although Nissan was aware of the widespread nature of the Gas Fumes Defect in the Class Vehicles, and that it posed grave health and safety risks, Nissan has failed to take adequate steps to repair the Defect or notify Class Vehicle owners and/or lessees of the Defect.

114. Customers have reported the Gas Fumes Defect in the Class Vehicles to Nissan directly and through its dealers. Defendant is fully aware of the Gas Fumes Defect contained in the Class Vehicles. Nevertheless, Defendant has failed to disclose the existence and nature of the Defect from Plaintiffs and the other Class Members at the time of purchase or when presented for repair and thereafter. Specifically, Defendant:

- a. failed to disclose, at the time of purchase or repair and thereafter, any and all known material defects or material nonconformities of the Class Vehicles, including the Gas Fumes Defect;
- b. failed to disclose, at the time of purchase or repair, and thereafter, that the Class Vehicles, and their engines were not in good working order, were defective, and were not fit for their intended purpose; and

- c. failed to disclose and/or actively concealed the fact that the Class Vehicles and their engines were defective, despite the fact that Defendant learned of the Gas Fumes Defect as early as beginning of 2022.

115. Defendant has deprived Class Members of the benefit of their bargain, exposed them all to a dangerous safety Defect, and caused them to expend money at its dealerships or other third-party repair facilities and/or take other remedial measures related to the Gas Fumes Defect contained in the Class Vehicles.

116. Defendant has not recalled the Class Vehicles to repair the Gas Fumes Defect, has not offered to its customers a suitable repair or replacement parts related to the Gas Fumes Defect free of charge, and has not reimbursed all Class Vehicle owners and leaseholders who incurred costs for repairs related to the Gas Fumes Defect.

117. Class Members have not received the value for which they bargained when they purchased or leased the Class Vehicles.

118. As a result of the Gas Fumes Defect, the value of the Class Vehicles has diminished, including without limitation, the resale value of the Class Vehicles. Reasonable consumers, like Plaintiffs, expect, and assume that their vehicles will not reek of gas when they drive their vehicles or when they park their vehicles, causing them headaches and nausea, and that their vehicles will not fill their garages with intoxicating gas fumes. Plaintiffs and Class Members further expect and assume that Nissan will not sell or lease vehicles with known safety defects, such as the Gas Fumes Defect, and will fully disclose any such defect to consumers prior to purchase or offer a suitable non-defective repair. They do not expect that Nissan would fail to disclose the Gas Fumes Defect to them.

CLASS ACTION ALLEGATIONS

A. The Classes

119. Plaintiffs bring this action on their own behalf, and on behalf of a nationwide class pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3).

Nationwide Class: All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in in the United States.

120. In the alternative to the Nationwide Class, and pursuant to Fed. R. Civ. P. 23(c)(5), Plaintiffs seek to represent the following state-specific classes:

Michigan Class: All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in the State of Michigan (the “Michigan Class”)

Illinois Class: All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in the State of Illinois (the “Illinois Class”)

Iowa Class: All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in the State of Iowa (the “Iowa Class”)

New York Class: All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in the State of New York (the “New York Class”)

Minnesota Class: All persons or entities who purchased or leased any 2022-2023 Nissan Rogue vehicle in the State of Minnesota (the “Minnesota Class”)

121. Defendant and its employees or agents are excluded from the Class.

B. Numerosity

122. Upon information and belief, the Classes are each so numerous that joinder of all members is impracticable. While the exact number and identities of individual members of the Classes are unknown at this time, such information being in the sole possession of Defendant, and obtainable by Plaintiffs only through the discovery process, Plaintiffs believe, and on that basis allege, that thousands of Class Vehicles have been sold and leased nationwide, throughout Michigan, and throughout Illinois

C. Common Questions of Law and Fact

123. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. These questions include:

- a. whether the Class Vehicles suffer from the Gas Fumes Defect;
- b. whether the Gas Fumes Defect constitutes an unreasonable safety hazard;
- c. whether Defendant knows about the Gas Fumes Defect and, if so, how long Defendant has known of the Defect;
- d. whether the defective nature of the Class Vehicles' PCV system constitutes a material defect;
- e. whether Defendant had and has a duty to disclose the defective nature of the Class Vehicles' PCV system to Plaintiffs and the other Class Members;
- f. whether Plaintiffs and the other Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;
- g. whether Defendant knew or reasonably should have known of the Gas Fumes Defect contained in the Class Vehicles before it sold or leased them to Class Members; and
- h. Whether Defendant breached its express warranty and the implied warranty of merchantability, engaged in fraudulent concealment and unjust enrichment, and whether Defendant violated the Michigan Consumer Protection Act, Mich. Comp. Laws Ann. § Ch. 445, *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*, Iowa Private Right of Action for Consumer Frauds Act, Iowa Code § 714H.1, *et seq.*, N.Y. Gen. Bus. Law § 349, Minnesota Consumer Fraud Act, Minn. Stat. Ann. § 325F.68, *et seq.*, and

the Magnuson-Moss Warranty Act, as alleged in this Amended Complaint.

D. Typicality

124. The Plaintiffs' claims are typical of the claims of the Classes since Plaintiffs purchased or leased defective Class Vehicles, as did each member of the Classes.

Furthermore, Plaintiffs and all members of the Classes sustained economic injuries arising out of Defendant's wrongful conduct. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all absent Class members.

E. Protecting the Interests of the Class Members

125. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiffs nor their counsel has any interest which might cause them not to vigorously pursue this action.

F. Proceeding Via Class Action is Superior and Advisable

126. A class action is the superior method for the fair and efficient adjudication of this controversy. The injury suffered by each individual Class member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, an

economy of scale, and comprehensive supervision by a single court. Upon information and belief, members of the Class can be readily identified and notified based on, *inter alia*, Defendant's vehicle identification numbers, warranty claims, registration records, and database of complaints.

127. Defendant has acted, and refused to act, on grounds generally applicable to the Classes, thereby making appropriate final equitable relief with respect to the Classes as a whole.

FIRST CAUSE OF ACTION
Breach of Implied and Express Warranties Pursuant to the Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.*

(Plaintiffs on behalf of the Nationwide Class or in the alternative State Sub-Classes)

128. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

129. Plaintiffs and members of the Classes are each a "consumer" as defined in 15 U.S.C. § 2301(3).

130. Defendant is a "supplier" and "warrantor" as defined in 15 U.S.C. § 2301(4) and (5).

131. The Class Vehicles are each a "consumer product" as defined in 15 U.S.C. § 2301(6). 15 U.S.C. § 2310(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with the written and implied warranties.

132. 15 U.S.C. § 2304(a)(1) requires Defendant, as a warrantor, to remedy any defect, malfunction or nonconformance of the Class Vehicles within a reasonable time and without charge to the Plaintiffs and Class members.

133. The Defendant's sale of the defective Class Vehicles and its failure and/or

refusal to repair the Class Vehicles' Gas Fumes Defect within the applicable warranty period constitutes a breach of the written and implied warranties applicable to the Class Vehicles.

134. Despite repeated demands, Defendant has failed to remedy the Class Vehicles' defects within a reasonable time, and/or a reasonable number of attempts, thereby breaching the written and implied warranties applicable to the Class Vehicles.

135. As a result of Defendant's breaches of the written and implied warranties, and Defendant's failure to remedy the same within a reasonable time, Plaintiffs and class members have suffered damages.

SECOND CAUSE OF ACTION

Fraudulent Concealment

(Plaintiffs on behalf of the Nationwide Class or in the alternative State Sub-Classes)

136. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

137. Prior to selling the Class Vehicles to Plaintiffs and the Class, Defendant knew that the Class Vehicles suffered from the Gas Fumes Defect.

138. By failing to disclose and concealing the Gas Fumes Defect from Plaintiffs and Class Members, Defendant concealed and suppressed material facts concerning the performance and quality of the Class Vehicles.

139. Defendant was under a duty to Plaintiffs and the Class Members to disclose the Gas Fumes Defect and/or the associated repair costs because:

- a. Defendant was in a superior position to know the true state of facts about the Class Vehicles' Gas Fumes Defect;
- b. Defendant knew that the Class Vehicles suffered from an inherent defect, were defectively designed or manufactured, and were not suitable for their intended use;

- c. Plaintiffs and the Class Members could not reasonably have been expected to learn or discover that their vehicles have the Gas Fumes Defect until after they purchased the Class Vehicles; and
- d. Defendant made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles and the Gas Fumes Defect.

140. On information and belief, Nissan still has not made full and adequate disclosures, and continues to defraud consumers by concealing material information regarding the Gas Fumes Defect and the performance and quality of Class Vehicles.

141. The facts concealed or not disclosed by Defendant to Plaintiffs and Class Members are material in that a reasonable person would have considered them to be important in deciding whether or not to purchase the Class Vehicles.

142. Plaintiffs and the Class relied on Defendant to disclose material information it knew, such as the Gas Fumes Defect in the Class Vehicles, and not to induce them into a transaction they would not have entered had the Defendant disclosed this information.

143. By failing to disclose the Gas Fumes Defect, Defendant knowingly and intentionally concealed material facts and breached its duty not to do so.

144. The facts concealed or not disclosed by Defendant to Plaintiffs and the other Class Members are material because a reasonable consumer would have considered them to be important in deciding whether or not to purchase the Class Vehicles, or to pay less for them.

145. Had Plaintiffs and other Class Members known that the Class Vehicles suffer from the Gas Fumes Defect, they would not have purchased the Class Vehicles or would have

paid less for them.

146. Plaintiffs and the other Class Members are reasonable consumers who do not expect that their vehicles will reek of gas, which is the reasonable and objective consumer expectation for vehicles and their engines.

147. As a result of Defendant's misconduct, Plaintiffs and the other Class Members have been harmed and have suffered actual and economic damages in that the Class Vehicles and their engines' fuel and/or emission systems are defective and require repairs or replacement, and are worth less money because of the Gas Fumes Defect.

148. Accordingly, Nissan is liable to Plaintiffs and Class Members for damages in an amount to be proven at trial.

149. Nissan's actions and omissions were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class Members' rights and well-being, to enrich Nissan. Nissan's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

150. Furthermore, as the intended and expected result of its fraud and conscious wrongdoing, Nissan has profited and benefited from Plaintiffs' and Class Members' purchase of Class Vehicles containing the Gas Fumes Defect. Nissan has voluntarily accepted and retained these profits and benefits with full knowledge and awareness that, as a result of Nissan's misconduct alleged herein, Plaintiffs and Class Members were not receiving vehicles of the quality, nature, fitness, or value that had been represented by Nissan, and that a reasonable consumer would expect.

151. Nissan has been unjustly enriched by its fraudulent, deceptive, and otherwise

unlawful conduct in connection with the sale and lease of Class Vehicles, and by withholding benefits from Plaintiffs and Class Members at the expense of these parties. Equity and good conscience militate against permitting Nissan to retain these profits and benefits, and Nissan should be required to make restitution of its ill-gotten gains resulting from the conduct alleged herein.

THIRD CAUSE OF ACTION

Unjust Enrichment

(Plaintiffs on behalf of the Nationwide Class or in the alternative State Sub-Classes)

152. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

153. Nissan has long known that about the Gas Fumes Defect which it concealed and failed to disclose to Plaintiffs and Class Members.

154. As a result of its fraudulent acts, and omissions related to the Gas Fumes Defect, Nissan obtained monies which rightfully belong to Plaintiffs, and the Class Members to the detriment of Plaintiffs, and Class Members.

155. Nissan appreciated, accepted, and retained the non-gratuitous benefits conferred by Plaintiffs and the proposed Class Members who, without knowledge of the Gas Fumes Defect, paid a higher price for their vehicles which actually had lower values. Nissan also received monies for vehicles that Plaintiffs and the Class Members would not have otherwise purchased or leased.

156. It would be inequitable and unjust for Nissan to retain these wrongfully obtained profits.

157. Nissan's retention of these wrongfully obtained profits would violate the fundamental principles of justice, equity, and good conscience.

158. As a result of Defendant's unjust enrichment, Plaintiffs, and Class Members have suffered damages.

159. Plaintiffs do not seek restitution under their Unjust Enrichment claim. Rather, Plaintiffs and Class Members seek non-restitutionary disgorgement of the financial profits that Defendant obtained as a result of its unjust conduct.

160. Additionally, Plaintiffs seek injunctive relief to compel Defendant to offer, under warranty, remediation solutions that Defendant identifies. Plaintiffs also seek injunctive relief enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles, enjoining Defendant from selling the Class Vehicles with misleading information concerning the Gas Fumes Defect; compelling Defendant to provide Class members with adequate repairs or with replacement components that do not contain the defects alleged herein; and/or compelling Defendant to reform its warranty, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed. Money damages are not an adequate remedy for the above requested non-monetary injunctive relief.

FOURTH CAUSE OF ACTION
Breach of the Implied Warranty of Merchantability Pursuant to
Mich. Comp. Laws Ann. § 440.2314

(Plaintiff Elias on behalf of the Michigan Class)

161. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

162. Defendant is a merchant with respect to motor vehicles.

163. The Class Vehicles were subject to implied warranties of merchantability running from the Defendant to Plaintiff Elias and the Michigan Class Members.

164. An implied warranty that the Class Vehicles were merchantable arose by operation of law as part of the sale or lease of the Class Vehicles.

165. Defendant breached the implied warranty of merchantability in that the Class Vehicles suffer from the defects referenced herein, and thus were not in merchantable condition when Plaintiff Elias, and the Michigan Class Members purchased or leased the Class Vehicles, or at any time thereafter, and the Class Vehicles are unfit for the ordinary purposes for which such vehicles are used. Specifically, the Class Vehicles were, and are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because the Class Vehicles suffer from a Gas Fumes Defect that can make vehicle operation unreasonably dangerous.

166. As a result of Defendant's breach of the applicable implied warranties, owners and lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Defendant's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use.

FIFTH CAUSE OF ACTION

Breach of Express Warranty Pursuant to Michigan. Stat. § 55-2-313

(Plaintiff Elias on behalf of the Michigan Class)

167. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

168. In connection with the sale or lease of the Class Vehicles, Defendant provided Plaintiff Elias and Michigan Class Members with a written warranty that provides, *inter alia*, that with respect to powertrain coverage Nissan would repair or replace defective powertrain components within the first 60 months in service.

169. Plaintiff Elias and Michigan Class Members relied on Defendant's warranties

when they agreed to purchase, or lease the Class Vehicles, and Defendant's warranties were part of the basis of the bargain.

170. Plaintiff Elias, and Michigan Class Members submitted their Vehicles for warranty repairs as referenced herein. Defendant failed to comply with the terms of the express written warranty provided to each Class member by failing, and/or refusing to repair the Gas Fumes Defect under the vehicle's warranty as described herein.

171. Plaintiff Elias and Michigan Class Members have given Defendant reasonable opportunities to cure the defect, but Defendant has been unable, and/or has refused to do so within a reasonable time.

172. As a result of said nonconformities, Plaintiff Elias and Michigan Class Members cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe, reliable, comfortable, and efficient transportation.

173. Plaintiff Elias, and Michigan Class Members could not reasonably have discovered these nonconformities with the Class Vehicles prior to Plaintiff Elias and Michigan Class Members' acceptance of the Class Vehicles.

174. Plaintiff Elias, and Michigan Class Members would not have purchased or leased the Class Vehicles, or would have paid less for the Class Vehicles, had they known, prior to their respective times of purchase or lease, that Class Vehicles contained the Gas Fumes Defect.

175. As a direct and proximate result of the willful failure of Defendant to comply with its obligations under the express warranties, Plaintiff Elias, and Michigan Class Members have suffered actual, and consequential damages. Such damages include, but are not limited to, the loss of the use and enjoyment of their vehicles, and a diminution in the value of the

vehicles containing the defects identified herein.

SIXTH CAUSE OF ACTION
Violation of Michigan Consumer Protection Act,
Mich. Comp. Laws Ann. § Ch. 445, *et seq.*
(Plaintiff Elias on behalf of the Michigan Class)

176. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

177. Michigan law broadly prohibits “unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce.” Mich. Comp. Laws Ann. § 445.903. A person who suffers a loss as a result of a violation of the Michigan Consumer Protection Act may “bring a class action on behalf of persons residing or injured in [the state of Michigan] for . . . actual damages.” Mich. Comp. Laws Ann. § 445.911.

178. The allegations set forth herein constitute false, misleading, or deceptive trade acts or practices.

179. By failing to disclose and concealing the Gas Fumes Defect from Plaintiff Elias and Michigan Class Members, Defendant violated the Michigan Consumer Protection Act, as it represented that the Class Vehicles had characteristics and benefits that they do not have, represented that the Class Vehicles were of a particular standard, quality, or grade when they were of another, and advertised the Class Vehicles with the intent not to sell them as advertised.

180. Defendant’s unfair and deceptive acts or practices occurred repeatedly in Defendant’s trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

181. Defendant knew that the Class Vehicles suffered from the Gas Fumes Defect, were defectively manufactured or made, would fail prematurely, and were not suitable for

their intended use.

182. Defendant was under a duty to Plaintiff Elias and Michigan Class Members to disclose the defective nature of the Class Vehicles because:

- a. Defendant was in a superior position to know the true state of facts about the Gas Fumes Defect contained in the Class Vehicles;
- b. Defendant knew that the Class Vehicles suffered from an inherent defect, were defectively designed or manufactured, and were not suitable for their intended use;
- c. Plaintiff Elias and Michigan Class Members could not reasonably have been expected to learn or discover that their vehicles have the Gas Fumes Defect until after they purchased the Class Vehicles; and,
- d. Defendant made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles and the Gas Fumes Defect.

183. The facts concealed or not disclosed by Defendant to Plaintiff Elias and Michigan Class Members are material in that a reasonable person would have considered them to be important in deciding whether or not to purchase the Class Vehicles.

184. Plaintiff Elias and Michigan Class Members relied on Defendant to disclose material information it knew, such as the Gas Fumes Defect in the Class Vehicles, and not to induce them into a transaction they would not have entered had the Defendant disclosed this information.

185. By failing to disclose the Gas Fumes Defect, Defendant knowingly and intentionally concealed material facts and breached its duty not to do so.

186. Had Plaintiff Elias and Michigan Class Members known that the Class Vehicles' fuel and/or emission systems were defective, they would not have purchased the Class Vehicles or would have paid less for them.

187. Plaintiff Elias and the other Michigan Class Members are reasonable consumers who do not expect that their vehicles will suffer from a Gas Fumes Defect, which is the reasonable and objective consumer expectation for vehicles.

188. As a result of Defendant's misconduct, Plaintiff Elias and Michigan Class Members have been harmed and have suffered actual and economic damages in that the Class Vehicles are defective, and require repairs, or replacement; and are worth less money because of the Gas Fumes Defect.

189. Plaintiff Elias has provided adequate notice to Defendant.

190. Plaintiff Elias and the Michigan Class should be awarded three times the amount of their economic damages because Defendant intentionally concealed and failed to disclose the defective nature of the Class Vehicles.

SEVENTH CAUSE OF ACTION

Breach of Express Warranty Pursuant to 810 Ill. Comp. Stat. Ann. 5/2-313

(Plaintiffs Wemer and Gallinas on behalf of the Illinois Class)

191. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

192. In connection with the sale or lease of the Class Vehicles, Defendant provided Plaintiffs Wemer and Gallinas and Illinois Class Members with a written warranty that provides, *inter alia*, that with respect to powertrain coverage Nissan would repair or replace defective powertrain components within the first 60 months in service.

193. Plaintiffs Wemer and Gallinas and Illinois Class Members relied on

Defendant's warranties when they agreed to purchase, or lease the Class Vehicles, and Defendant's warranties were part of the basis of the bargain.

194. Plaintiffs Wemer and Gallinas, and Illinois Class Members submitted their Vehicles for warranty repairs as referenced herein. Defendant failed to comply with the terms of the express written warranty provided to each Class member by failing, and/or refusing to repair the Gas Fumes Defect under the vehicle's warranty as described herein.

195. Plaintiffs Wemer and Gallinas and Illinois Class Members have given Defendant reasonable opportunities to cure the defect, but Defendant has been unable, and/or has refused to do so within a reasonable time.

196. As a result of said nonconformities, Plaintiffs Wemer and Gallinas and Illinois Class Members cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe, reliable, comfortable, and efficient transportation.

197. Plaintiffs Wemer and Gallinas, and Illinois Class Members could not reasonably have discovered these nonconformities with the Class Vehicles prior to Plaintiff Wemer and Gallinas and Illinois Class Members' acceptance of the Class Vehicles.

198. Plaintiffs Wemer and Gallinas, and Illinois Class Members would not have purchased or leased the Class Vehicles, or would have paid less for the Class Vehicles, had they known, prior to their respective times of purchase or lease, that Class Vehicles contained the Gas Fumes Defect.

199. As a direct and proximate result of the willful failure of Defendant to comply with its obligations under the express warranties, Plaintiffs Wemer and Gallinas, and Illinois Class Members have suffered actual, and consequential damages. Such damages include, but are not limited to, the loss of the use and enjoyment of their vehicles, and a diminution in the

value of the vehicles containing the defects identified herein.

EIGHTH CAUSE OF ACTION

**Violation of Illinois Consumer Fraud and Deceptive Business Practices Act,
815 ILCS 505/1, *et seq.*
(Plaintiffs Wemer and Gallinas on behalf of the Illinois Class)**

200. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

201. Plaintiffs Wemer and Gallinas and Illinois Class Members are each “consumers” as defined by 815 ILCS 505/1(e).

202. At all relevant times, Defendant has engaged in “trade” and “commerce” as defined by 815 ILCS 505/1(f) by advertising, offering for sale, selling, leasing, and/or distributing vehicles in the United States, including Illinois, directly or indirectly affecting Illinois citizens through that trade and commerce.

203. The allegations set forth herein constitute false, misleading, unlawful or deceptive trade practice under 815 ILCS 505, *et seq.*

204. By failing to disclose and concealing the Gas Fumes Defect from Plaintiffs Wemer and Gallinas and Illinois Class Members, Defendant violated the Illinois Consumer Fraud and Deceptive Business Practices Act as it represented that the Class Vehicles had characteristics and benefits that they do not have; represented that the Class Vehicles were of a particular standard, quality, or grade when they were of another; and advertised the Class Vehicles with the intent not to sell them as advertised.

205. Defendant’s unfair and deceptive acts or practices occurred repeatedly in Defendant’s trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

206. Defendant knew that the Class Vehicles suffered from the Gas Fumes Defect,

were defectively manufactured or made, would fail prematurely, and were not suitable for their intended use.

207. Defendant was under a duty to Plaintiffs Wemer and Gallinas and the Illinois Class Members to disclose the defective nature of the Class Vehicles because:

- a. Defendant was in a superior position to know the true state of facts about the Gas Fumes Defect contained in the Class Vehicles;
- b. Defendant knew that the Class Vehicles suffered from an inherent defect, were defectively designed or manufactured, and were not suitable for their intended use;
- c. Plaintiffs Wemer and Gallinas and the Illinois Class Members could not reasonably have been expected to learn or discover that their vehicles have the Gas Fumes Defect until after they purchased the Class Vehicles; and,
- d. Defendant made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles and the Gas Fumes Defect.

208. The facts concealed or not disclosed by Defendant to Plaintiffs Wemer and Gallinas and Illinois Class Members are material in that a reasonable person would have considered them to be important in deciding whether or not to purchase the Class Vehicles.

209. Plaintiffs Wemer and Gallinas and the Illinois Class Members relied on Defendant to disclose material information it knew, such as the Gas Fumes Defect in the Class Vehicles, and not to induce them into a transaction they would not have entered had the Defendant disclosed this information.

210. By failing to disclose the Gas Fumes Defect, Defendant knowingly and

intentionally concealed material facts and breached its duty not to do so.

211. Had Plaintiffs Wemer and Gallinas and Illinois Class Members known that the Class Vehicles' fuel and/or emission systems were defective, they would not have purchased the Class Vehicles or would have paid less for them.

212. Plaintiffs Wemer and Gallinas and the Illinois Class Members are reasonable consumers who do not expect that their vehicles will suffer from a Gas Fumes Defect, which is the reasonable and objective consumer expectation for vehicles.

213. As a result of Defendant's misconduct, Plaintiffs Wemer and Gallinas and Illinois Class Members have been harmed and have suffered actual and economic damages in that the Class Vehicles are defective and require repairs or replacement, and are worth less money because of the Gas Fumes Defect.

214. Plaintiffs Wemer and Gallinas have provided adequate notice to Defendant.

NINTH CAUSE OF ACTION

Breach of Express Warranty Pursuant to Iowa Code Ann. § 554.2313 (Plaintiff Hall on behalf of the Iowa Class)

215. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

216. In connection with the sale or lease of the Class Vehicles, Defendant provided Plaintiff Hall and Iowa Class Members with a written warranty that provides, *inter alia*, that with respect to powertrain coverage Nissan would repair or replace defective powertrain components within the first 60 months in service.

217. Plaintiff Hall and Iowa Class Members relied on Defendant's warranties when they agreed to purchase, or lease the Class Vehicles, and Defendant's warranties were part of the basis of the bargain.

218. Plaintiff Hall, and Iowa Class Members submitted their Vehicles for warranty repairs as referenced herein. Defendant failed to comply with the terms of the express written warranty provided to each Class member by failing, and/or refusing to repair the Gas Fumes Defect under the vehicle's warranty as described herein.

219. Plaintiff Hall and Iowa Class Members have given Defendant reasonable opportunities to cure the defect, but Defendant has been unable, and/or has refused to do so within a reasonable time.

220. As a result of said nonconformities, Plaintiff Hall and Iowa Class Members cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe, reliable, comfortable, and efficient transportation.

221. Plaintiff Hall, and Iowa Class Members could not reasonably have discovered these nonconformities with the Class Vehicles prior to Plaintiff Hall and Iowa Class Members' acceptance of the Class Vehicles.

222. Plaintiff Hall and Iowa Class Members would not have purchased or leased the Class Vehicles, or would have paid less for the Class Vehicles, had they known, prior to their respective times of purchase or lease, that Class Vehicles contained the Gas Fumes Defect.

223. As a direct and proximate result of the willful failure of Defendant to comply with its obligations under the express warranties, Plaintiff Hall, and Iowa Class Members have suffered actual, and consequential damages. Such damages include, but are not limited to, the loss of the use and enjoyment of their vehicles, and a diminution in the value of the vehicles containing the defects identified herein.

TENTH CAUSE OF ACTION
Violation of Iowa Private Right of Action for Consumer Frauds Act,
Iowa Code § 714H.1, *et seq.*
(Plaintiff Hall on behalf of the Iowa Class)

224. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

225. Plaintiff Hall and Iowa Class Members are “consumers,” as defined by Iowa Code § 714H.2(3).

226. Defendant is a “person” under Iowa Code § 714H.2(7).

227. The Iowa Private Right of Action for Consumer Frauds Act (“Iowa CFA”) prohibits any “practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in connection with the advertisement, sale, or lease of consumer merchandise.” Iowa Code § 714H.3.

228. The allegations set forth herein constitute false, misleading, unlawful or deceptive trade practice under Iowa CFA.

229. By failing to disclose and concealing the Gas Fumes Defect from Plaintiff Hall and Iowa Class Members, Defendant violated Iowa CFA, as it represented that the Class Vehicles had characteristics and benefits that they do not have, represented that the Class Vehicles were of a particular standard, quality, or grade when they were of another, and advertised the Class Vehicles with the intent not to sell them as advertised.

230. Defendant’s unfair and deceptive acts or practices occurred repeatedly in Defendant’s trade or business, were capable of deceiving a substantial portion of the

purchasing public, and imposed a serious safety risk on the public.

231. Defendant knew that the Class Vehicles suffered from the Gas Fumes Defect, were defectively manufactured or made, would fail prematurely, and were not suitable for their intended use.

232. Defendant was under a duty to Plaintiff Hall and Iowa Class Members to disclose the defective nature of the Class Vehicles because:

- a. Defendant was in a superior position to know the true state of facts about the Gas Fumes Defect contained in the Class Vehicles;
- b. Defendant knew that the Class Vehicles suffered from an inherent defect, were defectively designed or manufactured, and were not suitable for their intended use;
- c. Plaintiff Hall and Iowa Class Members could not reasonably have been expected to learn or discover that their vehicles have the Gas Fumes Defect until after they purchased the Class Vehicles; and,
- d. Defendant made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles and the Gas Fumes Defect.

233. The facts concealed or not disclosed by Defendant to Plaintiff Hall and Iowa Class Members are material in that a reasonable person would have considered them to be important in deciding whether or not to purchase the Class Vehicles.

234. Plaintiff Hall and Iowa Class Members relied on Defendant to disclose material information it knew, such as the Gas Fumes Defect in the Class Vehicles, and not to induce them into a transaction they would not have entered had the Defendant disclosed this

information.

235. By failing to disclose the Gas Fumes Defect, Defendant knowingly and intentionally concealed material facts and breached its duty not to do so.

236. Had Plaintiff Hall and Iowa Class Members known that the Class Vehicles' fuel and/or emission systems were defective, they would not have purchased the Class Vehicles or would have paid less for them.

237. Plaintiff Hall and the other Iowa Class Members are reasonable consumers who do not expect that their vehicles will suffer from a Gas Fumes Defect, which is the reasonable and objective consumer expectation for vehicles.

238. As a result of Defendant's misconduct, Plaintiff Hall and Iowa Class Members have been harmed and have suffered actual and economic damages in that the Class Vehicles are defective, and require repairs, or replacement; and are worth less money because of the Gas Fumes Defect.

239. As a direct and proximate result of Defendant's violations of Iowa CFA, pursuant to Iowa Code § 714H.5, Plaintiff Hall and the Iowa Class seek to recover actual damages in an amount to be determined at trial; treble damages for Defendant's knowing violations of the Iowa CFA; an order enjoining Defendant's unfair, unlawful, and/or deceptive practices; declaratory relief; attorneys' fees; and any other just and proper relief available under the Iowa CFA, Plaintiff Hall and the Iowa Class have suffered injury-in-fact and/or actual damage.

ELEVENTH CAUSE OF ACTION
Breach of Express Warranty Pursuant to N.Y. UCC § 2-313
(Plaintiff Lawson on behalf of the New York Class)

240. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

241. In connection with the sale or lease of the Class Vehicles, Defendant provided Plaintiff Lawson and New York Class Members with a written warranty that provides, *inter alia*, that with respect to powertrain coverage Nissan would repair or replace defective powertrain components within the first 60 months in service.

242. Plaintiff Lawson and New York Class Members relied on Defendant's warranties when they agreed to purchase, or lease the Class Vehicles, and Defendant's warranties were part of the basis of the bargain.

243. Plaintiff Lawson, and New York Class Members submitted their Vehicles for warranty repairs as referenced herein. Defendant failed to comply with the terms of the express written warranty provided to each Class member by failing, and/or refusing to repair the Gas Fumes Defect under the vehicle's warranty as described herein.

244. Plaintiff Lawson and New York Class Members have given Defendant reasonable opportunities to cure the defect, but Defendant has been unable, and/or has refused to do so within a reasonable time.

245. As a result of said nonconformities, Plaintiff Lawson and New York Class Members cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe, reliable, comfortable, and efficient transportation.

246. Plaintiff Lawson, and New York Class Members could not reasonably have discovered these nonconformities with the Class Vehicles prior to Plaintiff Lawson and New York Class Members' acceptance of the Class Vehicles.

247. Plaintiff Lawson and New York Class Members would not have purchased or leased the Class Vehicles, or would have paid less for the Class Vehicles, had they known, prior to their respective times of purchase or lease, that Class Vehicles contained the Gas

Fumes Defect.

248. As a direct and proximate result of the willful failure of Defendant to comply with its obligations under the express warranties, Plaintiff Lawson, and New York Class Members have suffered actual, and consequential damages. Such damages include, but are not limited to, the loss of the use and enjoyment of their vehicles, and a diminution in the value of the vehicles containing the defects identified herein.

TWELFTH CAUSE OF ACTION
Violation of N.Y. Gen. Bus. Law § 349
(Plaintiff Lawson on behalf of the New York Class)

249. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

250. Plaintiff Lawson and New York Class Members are each “persons” under N.Y. Gen. Bus. Law § 349(g).

251. Defendant is a “person,” “firm,” “corporation” or “association” under N.Y. Gen. Bus. Law § 349(g).

252. The allegations set forth herein constitute false, misleading, unlawful or deceptive trade practice under N.Y. Gen. Bus. Law § 349, *et seq.*

253. By failing to disclose and concealing the Gas Fumes Defect from Plaintiff Lawson and New York Class Members, Defendant violated the N.Y. Gen. Bus. Law § 349, *et seq.*, as it represented that the Class Vehicles had characteristics and benefits that they do not have, represented that the Class Vehicles were of a particular standard, quality, or grade when they were of another, and advertised the Class Vehicles with the intent not to sell them as advertised.

254. Defendant’s unfair and deceptive acts or practices occurred repeatedly in

Defendant's trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

255. Defendant knew that the Class Vehicles suffered from the Gas Fumes Defect, were defectively manufactured or made, would fail prematurely, and were not suitable for their intended use.

256. Defendant was under a duty to Plaintiff Lawson and the New York Class Members to disclose the defective nature of the Class Vehicles because:

- a. Defendant was in a superior position to know the true state of facts about the Gas Fumes Defect contained in the Class Vehicles;
- b. Defendant knew that the Class Vehicles suffered from an inherent defect, were defectively designed or manufactured, and were not suitable for their intended use;
- c. Plaintiff Lawson and the New York Class Members could not reasonably have been expected to learn or discover that their vehicles have the Gas Fumes Defect until after they purchased the Class Vehicles; and,
- d. Defendant made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles and the Gas Fumes Defect.

257. The facts concealed or not disclosed by Defendant to Plaintiff Lawson and New York Class Members are material in that a reasonable person would have considered them to be important in deciding whether or not to purchase the Class Vehicles.

258. Plaintiff Lawson and the New York Class Members relied on Defendant to disclose material information it knew, such as the Gas Fumes Defect in the Class Vehicles,

and not to induce them into a transaction they would not have entered had the Defendant disclosed this information.

259. By failing to disclose the Gas Fumes Defect, Defendant knowingly and intentionally concealed material facts and breached its duty not to do so.

260. Had Plaintiff Lawson and New York Class Members known that the Class Vehicles' fuel and/or emission systems were defective, they would not have purchased the Class Vehicles or would have paid less for them.

261. Plaintiff Lawson and the other New York Class Members are reasonable consumers who do not expect that their vehicles will suffer from a Gas Fumes Defect, which is the reasonable and objective consumer expectation for vehicles.

262. As a result of Defendant's misconduct, Plaintiff Lawson and New York Class Members have been harmed and have suffered actual and economic damages in that the Class Vehicles are defective, and require repairs, or replacement; and are worth less money because of the Gas Fumes Defect.

THIRTEENTH CAUSE OF ACTION
Breach of Implied Warranty of Merchantability Pursuant to
Minn. Stat. Ann. § 336.2-314
(Plaintiff Headley on behalf of the Minnesota Class)

263. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

264. Defendant is a merchant with respect to motor vehicles.

265. The Class Vehicles were subject to implied warranties of merchantability running from the Defendant to Plaintiff Headley and the Minnesota Class Members.

266. An implied warranty that the Class Vehicles were merchantable arose by operation of law as part of the sale or lease of the Class Vehicles.

267. Defendant breached the implied warranty of merchantability in that the Class Vehicles suffer from the defects referenced herein, and thus were not in merchantable condition when Plaintiff Headley, and the Minnesota Class Members purchased or leased the Class Vehicles, or at any time thereafter, and the Class Vehicles are unfit for the ordinary purposes for which such vehicles are used. Specifically, the Class Vehicles were, and are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because the Class Vehicles suffer from a Gas Fumes Defect that can make vehicle operation unreasonably dangerous.

268. As a result of Defendant's breach of the applicable implied warranties, owners and lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Defendant's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use.

FOURTEENTH CAUSE OF ACTION

**Breach of Express Warranty Pursuant to Minn. Stat. Ann. § 336.2-313
(Plaintiff Headley on behalf of the Minnesota Class)**

269. Plaintiffs incorporate by reference all of the above paragraphs of this Complaint as though fully stated herein.

270. In connection with the sale or lease of the Class Vehicles, Defendant provided Plaintiff Headley and Minnesota Class Members with a written warranty that provides, *inter alia*, that with respect to powertrain coverage Nissan would repair or replace defective powertrain components within the first 60 months in service.

271. Plaintiff Headley and Minnesota Class Members relied on Defendant's warranties when they agreed to purchase, or lease the Class Vehicles, and Defendant's warranties were part of the basis of the bargain.

272. Plaintiff Headley, and Minnesota Members submitted their Vehicles for

warranty repairs as referenced herein. Defendant failed to comply with the terms of the express written warranty provided to each Class member by failing, and/or refusing to repair the Gas Fumes Defect under the vehicle's warranty as described herein.

273. Plaintiff Headley and Minnesota Class Members have given Defendant reasonable opportunities to cure the defect, but Defendant has been unable, and/or has refused to do so within a reasonable time.

274. As a result of said nonconformities, Plaintiff Headley and Minnesota Class Members cannot reasonably rely on the Class Vehicles for the ordinary purpose of safe, reliable, comfortable, and efficient transportation.

275. Plaintiff Headley, and Minnesota Members could not reasonably have discovered these nonconformities with the Class Vehicles prior to Plaintiff Headley and Minnesota Class Members' acceptance of the Class Vehicles.

276. Plaintiff Headley and Minnesota Class Members would not have purchased or leased the Class Vehicles, or would have paid less for the Class Vehicles, had they known, prior to their respective times of purchase or lease, that Class Vehicles contained the Gas Fumes Defect.

277. As a direct and proximate result of the willful failure of Defendant to comply with its obligations under the express warranties, Plaintiff Headley, and Minnesota Class Members have suffered actual, and consequential damages. Such damages include, but are not limited to, the loss of the use and enjoyment of their vehicles, and a diminution in the value of the vehicles containing the defects identified herein.

FIFTEENTH CAUSE OF ACTION

**Violation of the Minnesota Consumer Fraud Act,
Minn. Stat. Ann. § 325F.68, et seq.
(Plaintiff Headley on behalf of the Minnesota Class)**

278. Plaintiffs incorporate by reference all allegations contained in this Complaint as though fully stated herein.

279. Plaintiff Headley, the Minnesota Class Members, and Defendant are each a “person” under Minn. Stat. Ann. § 325F.68(3).

280. The Class Vehicles are “merchandise” under Minn. Stat. Ann. § 325F.68(2).

281. At all relevant times, Defendant has engaged in “sale” under Minn. Stat. Ann. § 325F.68(4) by advertising, offering for sale, selling, leasing, and/or distributing vehicles in the United States, including in Minnesota, directly or indirectly affecting Minnesota citizens through that trade and commerce.

282. The allegations set forth herein constitute false, misleading, unlawful or deceptive trade practice in violation of the Minnesota Consumer Fraud Act, Minn. Stat. Ann. § 325F.68, *et seq.*

283. By failing to disclose and concealing the Gas Fumes Defect from Plaintiff Headley and Minnesota Class Members, Defendant violated the Minnesota Consumer Fraud Act, as it represented that the Class Vehicles had characteristics and benefits that they do not have, represented that the Class Vehicles were of a particular standard, quality, or grade when they were of another, and advertised the Class Vehicles with the intent not to sell them as advertised.

284. Defendant’s unfair and deceptive acts or practices occurred repeatedly in Defendant’s trade or business, were capable of deceiving a substantial portion of the purchasing public, and imposed a serious safety risk on the public.

285. Defendant knew that the Class Vehicles suffered from the Gas Fumes Defect, were defectively manufactured or made, would fail prematurely, and were not suitable for their intended use.

286. Defendant was under a duty to Plaintiff Headley and Minnesota Class Members to disclose the defective nature of the Class Vehicles because:

- a. Defendant was in a superior position to know the true state of facts about the Gas Fumes Defect contained in the Class Vehicles;
- b. Defendant knew that the Class Vehicles suffered from an inherent defect, were defectively designed or manufactured, and were not suitable for their intended use;
- c. Plaintiff Headley and Minnesota Class Members could not reasonably have been expected to learn or discover that their vehicles have the Gas Fumes Defect until after they purchased the Class Vehicles; and,
- d. Defendant made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles and the Gas Fumes Defect.

287. Moreover, Defendant's intentional concealment of and failure to disclose the Gas Fumes Defect constitutes an unfair and deceptive act and practice because, to the detriment of Plaintiff Headley and Minnesota Class Members, that conduct took advantage of Plaintiff Headley and Minnesota Class Members' lack of knowledge, ability, and experience to a grossly unfair degree. Defendant's unfair and deceptive trade practices were a producing cause of the economic damages sustained by Plaintiff Headley and Minnesota Class Members.

288. The facts concealed or not disclosed by Defendant to Plaintiff Headley and Minnesota Class Members are material in that a reasonable person would have considered them to be important in deciding whether or not to purchase the Class Vehicles.

289. Plaintiff Headley and Minnesota Class Members relied on Defendant to disclose material information it knew, such as the Gas Fumes Defect in the Class Vehicles, and not to induce them into a transaction they would not have entered had the Defendant disclosed this information.

290. By failing to disclose the Gas Fumes Defect, Defendant knowingly and intentionally concealed material facts and breached its duty not to do so.

291. Had Plaintiff Headley and Minnesota Class Members known that the Class Vehicles' fuel and/or emission systems were defective, they would not have purchased the Class Vehicles or would have paid less for them.

292. Plaintiff Headley and Minnesota Class Members are reasonable consumers who do not expect that their vehicles will suffer from a Gas Fumes Defect, which is the reasonable and objective consumer expectation for vehicles.

293. As a result of Defendant's misconduct, Plaintiff Headley and Minnesota Class Members have been harmed and have suffered actual and economic damages in that the Class Vehicles are defective, and require repairs, or replacement; and are worth less money because of the Gas Fumes Defect.

294. Plaintiff Headley also seeks injunctive relief to compel Defendant to offer, under warranty, remediation solutions that Defendant identifies. Plaintiff Headley also seeks injunctive relief enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles, enjoining Defendant from selling the Class Vehicles

with misleading information concerning the Gas Fumes Defect; compelling Defendant to provide Class members with adequate repairs or with replacement components that do not contain the defects alleged herein; and/or compelling Defendant to reform its warranty, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed.

295. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Nissan's business and has the potential for repetition.

296. Plaintiff Headley has provided adequate notice to Defendant.

297. Plaintiff Headley and the Minnesota Class Members should be awarded punitive damages because Defendant intentionally concealed and failed to disclose the defective nature of the Class Vehicles.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for judgment against Defendant as follows:

- a. An order certifying the proposed Classes, designating Plaintiffs as named representative of the Classes, and designating the undersigned as Class Counsel;
- b. An order awarding Plaintiffs and class members their actual damages, incidental and consequential damages, punitive damages, and/or other form of monetary relief provided by law;
- c. An order awarding Plaintiffs and the classes restitution, disgorgement, or other equitable relief as the Court deems proper;

- d. Equitable relief including, but not limited to, replacement of the Class Vehicles with new vehicles, or repair of the defective Class Vehicles with an extension of the express warranties and service contracts which are or were applicable to the Class Vehicles;
- e. A declaration requiring Defendant to comply with the various provisions of the state and federal consumer protection statutes herein alleged and to make all the required disclosures;
- f. Reasonable attorneys' fees and costs;
- g. Pre-judgment and post-judgment interest, as provided by law;
- h. Plaintiffs demand that Defendant perform a recall, and repair all Class Vehicles; and
- i. Such other and further relief as this Court deems just and proper.

Dated: August 14, 2023

Respectfully submitted,

By: /s/ Susan S. Lafferty
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that the foregoing First Amended Class Action Complaint was filed with court on August 14, 2023 via CM/ECF and is available electronically, and sent notice of such filing to the following:

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/s/ Susan S. Lafferty_____

Susan S. Lafferty, CPA, Esq.